

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF NEW MEXICO  
3       SECURITIES AND EXCHANGE COMMISSION,  
4                   Plaintiff,  
5       vs.                         NO:   12-0257 JB/GBW  
6       LARRY A. GOLDSTONE, et al.,  
7                   Defendants.

8  
9   VOLUME 7

10           Transcript of Trial Proceeding before The  
11   Honorable James O. Browning, United States District  
12   Judge, Albuquerque, Bernalillo County, New Mexico,  
13   commencing on June 14, 2016.

14   For the Plaintiff:   Mr. Steve McKenna; Mr. Greg  
15   Kasper; Ms. Danielle Voorhees; Mr. Dugan Bliss

16   For the Defendants:   Mr. Randall Lee; Ms. Heather  
17   Tewksbury; Mr. Robert Badal; Mr. Andrew Schultz

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## I N D E X

## EXAMINATION OF JENNIFER HALL

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1 THE COURT: Good morning, everyone. I  
2 appreciate everybody being here and ready to go.  
3 Ms. Wild is handing each table a set of typed jury  
4 instructions, so what you had yesterday in the p.m.  
5 version is now typed in here. I haven't had a chance  
6 to look at the SEC's letter that came in yesterday.  
7 I got it this morning. So I'll take a look at it.  
8 But everything I had written out is typed in.

9 Ladies and gentlemen, do take a look at  
10 that jury. I'm not going to tell you how to try your  
11 case. They're done. They're waiting for Mr.  
12 Goldstone, Mr. Simmons to testify, and they're done.  
13 I know you want a month, and you can have it, but not  
14 a single person that I saw yesterday was taking  
15 notes. They've got their arms crossed. You know, do  
16 whatever you want, but keep looking at the jury.  
17 That's your audience.

18 Anything we need to discuss before we bring  
19 the jury in? Mr. McKenna?

20 MR. McKENNA: No, Your Honor.

21 THE COURT: Mr. Lee?

22 MR. LEE: No, Your Honor. I mean, we  
23 certainly appreciate the Court's comments. We are  
24 thinking about what to do with our case, and I think,  
25 as I indicated last night, I think we're confident

1 about the timetable.

2 THE COURT: Well, I'm not telling you how  
3 to try your case, but that's your audience and  
4 they've shut down taking notes, and they're crossing  
5 their arms. I don't know, just me looking at body  
6 language, they're kind of done. They're waiting to  
7 hear from your two clients. That's I think the ball  
8 game for them, and then they'll be ready to decide.  
9 I can look at the list here. If there is a lot more  
10 that you want to do, that's fine. But it's y'all's  
11 case. I ain't going anywhere.

12 I should have the Starrett opinion out  
13 pretty quickly. I have some changes I'm making to  
14 it. So we should have that to you and give you  
15 guidance on the examination of her settlement  
16 document.

17 All rise.

18 (The jury entered the courtroom.)

19 THE COURT: Well, good morning, ladies and  
20 gentlemen. Thank you for being back on time ready to  
21 go. I appreciate all you're doing for us and the way  
22 you're going about it. We appreciate your  
23 punctuality and being ready to go every time we ask  
24 you to be ready to go. We appreciate it very much.

25 All right, Ms. Hall, I'll remind you that

1     you're still under oath.

2                 Mr. Lee, if you wish to continue your  
3     cross-examination of Ms. Hall, you may do so at this  
4     time.

5                 MR. LEE: I do. Thank you, Your Honor.

6                 THE COURT: Mr. Lee.

7                         JENNIFER HALL,  
8     after having been previously duly sworn under  
9     oath, was questioned, and continued testifying  
10    as follows:

11                        CONTINUED CROSS-EXAMINATION

12    BY MR. LEE:

13                 Q. Good morning, Ms. Hall.

14                 A. Good morning.

15                 Q. When we left off yesterday, we were talking  
16    about the size and scope of the actual engagement.  
17    Do you recall that?

18                 A. Yes.

19                 Q. And we started to go through members of the  
20    engagement team, and then we broke for the evening.  
21    Do you recall that?

22                 A. Yes.

23                 Q. So I'd just like to pick up and go through  
24    that fairly quickly. So let's just see if we can  
25    identify the principal members of the engagement

1 team. So it was Ms. Reinhart, Mr. Womack,  
2 Mr. Taylor, and Mr. McLamb were the four partners who  
3 were members of -- core members of the engagement  
4 team; is that right?

5 A. They were part of the team; that's correct.

6 Q. And then the managers were yourself and Ms.  
7 Baucom?

8 A. Yes.

9 Q. And then there were a number of folks below  
10 the level of manager; is that correct?

11 A. Yes.

12 Q. And that included Mr. Plummer?

13 A. Yes.

14 Q. Ms. Jones?

15 A. Yes.

16 Q. Mr. Acree?

17 A. Yes.

18 Q. Mr. Kowalski?

19 A. I believe so, yes.

20 Q. Ms. Mondragon?

21 A. That sounds right.

22 Q. Any other names I left off at this point?

23 A. Not that I can think of.

24 Q. Okay. And you would agree, would you not,  
25 that the total team spent somewhere in the

1 neighborhood of 4,500 to 5,000 hours on the  
2 engagement up to the time of the issuance of the  
3 audit opinion?

4 A. That sounds right.

5 Q. And during the audit, the KPMG engagement  
6 team had offices at Thornburg; correct?

7 A. That's correct.

8 Q. You had your own office space on the second  
9 floor of the Thornburg offices?

10 A. That's correct.

11 Q. And you had free access to go anywhere  
12 within Thornburg's offices; correct?

13 A. That's correct.

14 Q. And the office -- your offices were  
15 essentially just across the hall from where the  
16 Thornburg offices were; right? Or down the hall?

17 A. We were where the mortgage department was.

18 Q. And you had unrestricted access not only to  
19 the office, to the Thornburg office themselves --  
20 itself, but also to Thornburg employees; correct?

21 A. That's correct.

22 Q. In other words, you could go up and talk to  
23 and ask questions of any Thornburg employee; right?

24 A. That's correct.

25 Q. You didn't have to ask permission of

1 anybody or go through any of our clients to ask for  
2 permission to speak to a Thornburg employee, did you?

3 A. I did not.

4 Q. And you could ask for information directly  
5 from any employee of Thornburg; correct?

6 A. That's correct.

7 Q. And you did ask for information from many  
8 employees at Thornburg; right?

9 A. That's correct.

10 Q. And the information requests on behalf of  
11 KPMG would come not only from you, but any member of  
12 the engagement team could ask for information; right?

13 A. That's correct.

14 Q. So information from KPMG could go at  
15 various levels to various levels at Thornburg; right?

16 A. That's correct.

17 Q. There was no central clearinghouse for  
18 information requests.

19 A. No.

20 Q. Okay. And you made information requests  
21 from time to time?

22 A. Yes.

23 Q. And members -- Ms. Baucom did; correct?

24 A. Yes.

25 Q. Ms. Reinhart did; correct?



1 A. Yes.

2 Q. Mr. Plummer did; correct?

3 A. Yes.

4 Q. And in fact, any member of the team could  
5 and did at various times make information requests of  
6 various people at Thornburg; right?

7 A. Correct.

8 Q. And no one, to your knowledge, at Thornburg  
9 ever refused a request for information from KPMG, did  
10 they?

11 A. There were times we'd ask for information,  
12 and if they didn't have it, they'd say they didn't  
13 have it. But they wouldn't say, "No, I won't give  
14 that to you."

15 Q. And even if a particular piece of  
16 information they didn't have it, your request was  
17 always addressed somehow; correct?

18 A. To our satisfaction, yes.

19 Q. Now, let's just go through some of the  
20 people at Thornburg whom you dealt with in addition  
21 to Mr. Goldstone and Mr. Simmons and Ms. Starrett.  
22 You knew who Michael Coltharp was; correct?

23 A. Yes.

24 Q. He was a controller at Thornburg?

25 A. Yes.

1 Q. And you dealt with him directly; right?

2 A. Yes.

3 Q. You made information requests to him?

4 A. Yes.

5 Q. You knew who Shawn Buniel -- we've already  
6 talked a little about Shawn Buniel; right?

7 A. Yes.

8 Q. He was in the accounting department?

9 A. Right.

10 Q. And you made requests to him; correct?

11 A. Correct.

12 Q. And you dealt with him; correct?

13 A. Yes.

14 Q. Do you recall who the head of internal  
15 audit was, a gentleman named Ben Smiley?

16 A. Yes.

17 Q. And he was Thornburg's own in-house  
18 auditor; correct?

19 A. Yes.

20 Q. In charge of what's known as their internal  
21 audit function, which is different from the external  
22 audit function; right?

23 A. Yes.

24 Q. So KPMG are the external auditors, but  
25 Thornburg also had an internal audit function; right?

1 A. Right.

2 Q. And that was Ben Smiley; right?

3 A. Right.

4 Q. And you dealt with Ben Smiley; correct?

5 A. Yes.

6 Q. And you requested information from Ben  
7 Smiley?

8 A. Yes.

9 Q. There was another woman named Francine  
10 Jacquez, and she was the assistant controller and  
11 financial reporting manager. Do you recall her?

12 A. Yes.

13 Q. And you dealt with her?

14 A. Yes.

15 Q. You made requests to her?

16 A. Yes.

17 Q. We've talked a little about the capital  
18 markets group, and capital markets group was  
19 responsible for managing kind of the company's assets  
20 and liabilities. Is that fair to say?

21 A. Yes.

22 Q. And one of the responsibilities of the  
23 capital markets group was to deal with the company's  
24 reverse repurchase lending agreements; is that right?

25 A. Yes.

1 Q. And the head of capital markets was an  
2 individual named Nate Fellers; correct?

3 A. That's right.

4 Q. And you dealt with Mr. Fellers?

5 A. Yes.

6 Q. And you requested information directly from  
7 Mr. Fellers?

8 A. Yes.

9 Q. There was also an individual in capital  
10 markets group named Patrick Feldman. Do you recall  
11 him?

12 A. Yes.

13 Q. You dealt with him?

14 A. Yes.

15 Q. Requested information from him?

16 A. Yes.

17 Q. There was another individual in capital  
18 markets group named Xen Stanhope. Do you recall him?

19 A. Yes.

20 Q. And you requested information from him?

21 A. Yes.

22 Q. And there was another individual in the  
23 capital markets group named Ralph Ahn. Do you recall  
24 him?

25 A. Yes.

1 Q. You dealt with him directly?

2 A. Yes.

3 Q. And you requested information from him;  
4 correct?

5 A. Yes.

6 Q. Do you recall an individual named Tim  
7 Sturdy, also in the capital markets group?

8 A. Yes, that sounds familiar. Yes.

9 Q. And you recall at least having some  
10 dealings with him?

11 A. Yes.

12 Q. And of course, you had a relationship with  
13 Ms. Starrett; right?

14 A. Yes.

15 Q. And you requested information directly from  
16 her?

17 A. Yes.

18 Q. And you interacted directly with her?

19 A. Yes.

20 Q. And you had a relationship with Mr.  
21 Goldstone and Mr. Simmons; right?

22 A. Yes.

23 Q. And on occasion you requested information  
24 directly from them; right?

25 A. That's correct.

1 Q. Are there any other Thornburg employees I  
2 haven't touched on whom you recall having dealings  
3 with?

4 A. Deborah -- I forget her last name -- that  
5 was structured finance.

6 Q. Ms. Burns? Deborah Burns?

7 A. Yes.

8 Q. She was head of securitizations?

9 A. Yes.

10 Q. So you had a relationship with her, as  
11 well?

12 A. Yes.

13 Q. And you requested information from her?

14 A. Yes.

15 Q. How about Ms. O'Leary or formerly Ms.  
16 O'Leary Lopez? Do you recall her?

17 A. Not offhand, no.

18 Q. Anyone else you recall dealing with?

19 A. Not that I can think of offhand.

20 Q. And throughout the audit, then, you had the  
21 ability to go up to any one of those individuals and  
22 ask for information; correct?

23 A. That's correct.

24 Q. And you didn't have to seek the permission  
25 of anybody at Thornburg in order to do so; right?

1 A. That's correct.

2 Q. Yesterday you testified about a statement  
3 from Mr. Simmons, where you said he told you that it  
4 was unlikely that values of the collateral, repo  
5 collateral, would decline further and that the market  
6 was stabilizing. Do you recall that?

7 A. Yes.

8 Q. Is that another one of those conversations  
9 that you don't have notes of?

10 A. I don't know if I have notes or not.

11 Q. Do you recall when specifically that  
12 conversation was?

13 A. It was late in February of 2008.

14 Q. But you don't remember the day?

15 A. No.

16 Q. Do you remember where that conversation  
17 was?

18 A. It was in a conference room in the mortgage  
19 area.

20 Q. But you remember that specific statement  
21 even though you aren't aware of any notes  
22 memorializing that?

23 A. Yes. Well, I memorialized it in my memo.

24 Q. And the memo says it was management's  
25 decision, not that it was Mr. Simmons' decision. Do

1 you recall that?

2 A. Yes. I had conversations with Clay and  
3 Nate Fellers about that.

4 Q. And is it your recollection that Mr.  
5 Fellers also shared that view?

6 A. Yes, he talked about the market bottoming  
7 out and stabilizing.

8 Q. And it's not your view today that Mr.  
9 Fellers didn't actually believe that, is it?

10 A. I have no reason to think he did not  
11 believe that.

12 Q. And it's not your view today that Mr.  
13 Simmons didn't actually believe that; correct?

14 A. That's correct.

15 Q. And you're not opining that anyone  
16 predicted the decline in the value of Alt-A  
17 securities, are you?

18 A. Well, given the information in the emails  
19 I've seen, it seems like they did expect decline in  
20 the Alt-A securities.

21 Q. Well, the question was: You don't have any  
22 evidence that anyone actually predicted that Alt-A --  
23 the Alt-A securities market would decline?

24 A. I think the email from Larry clearly  
25 documents that he expected a decline in Alt-A



1 securities.

2 Q. Well, that email says it would occur  
3 gradually; correct?

4 A. Yes.

5 Q. But you're not aware of any evidence that  
6 anyone expected it to decline significantly on the  
7 28th or the 29th; correct?

8 A. Not specifically, no.

9 Q. And you were also, yourself, aware of the  
10 distressed market conditions at the time; correct?

11 A. Yes.

12 Q. And others at KPMG were monitoring the  
13 state of the mortgage markets; correct?

14 A. Yes.

15 Q. And you didn't predict that the value of  
16 Alt-A securities would decline dramatically on  
17 February 28th and 29th, did you?

18 A. No.

19 Q. And to your knowledge, no one at KPMG  
20 predicted that the value of Alt-A securities would  
21 decline dramatically on February 28th and 29th, did  
22 they?

23 A. Nobody on our engagement team.

24 Q. And during the restatement period, you  
25 actually looked specifically at this issue; correct?

1 A. Yes.

2 Q. And if we can pull up Exhibit DY. And this  
3 is a memo from you to the file dated March 20, with  
4 some additional handwritten dates below that. And  
5 it's entitled "February 28, 2008, market events";  
6 right?

7 A. Yes.

8 Q. And it says it's to document the client's  
9 analysis regarding the events that unfolded  
10 immediately after filing their Form 10-K. Do you see  
11 that?

12 A. Yes.

13 Q. And if we can go to page 3 of the document  
14 Bates ending 688, to the third full paragraph. And  
15 this -- if I can direct your attention to the third  
16 sentence, the third sentence, and continuing through  
17 the remainder of the paragraph. It says, "The  
18 company translated the occurrence to have a  
19 likelihood of occurrence, assuming a normal  
20 distribution, of zero percent to 9 percent. In other  
21 words, the chance of the magnitude of decline in  
22 value of Thornburg's securities on August 28, 2008,"  
23 and you would agree that's a typo and that should say  
24 February 28th?

25 A. Yes.

1 Q. "The chance of a decline -- of the  
2 magnitude of decline in value of Thornburg's  
3 securities on February 28, 2008, was more remote than  
4 a natural disaster. For example, in the case of  
5 index 06-1, the chances of the value decline on  
6 February 27 was essentially zero percent." Do you  
7 see that?

8 A. Yes.

9 Q. And KPMG actually did some work to check  
10 the accuracy of that projection or prediction view by  
11 management; right?

12 A. No.

13 Q. Well, let's go down to the next sentence  
14 and see if this refreshes your recollection as to  
15 what KPMG did?

16 A. I say we didn't test their analysis, but we  
17 did look at other information.

18 Q. Okay. So let's read the first sentence.  
19 It says, "KPMG obtained analyst reports from Deutsche  
20 Bank and Credit Suisse regarding market changes  
21 during the same time period." Do you see that?

22 A. Yes.

23 Q. And KPMG, in fact, did that; right?

24 A. Yes.

25 Q. And then it goes on to say, "Their reports

1 seem to support the company's analysis." Do you see  
2 that?

3 A. Yes.

4 Q. And you believed that at the time; right?

5 A. Yes.

6 Q. And then it quotes from a publication from  
7 Deutsche Bank which presumably -- I won't get into  
8 the technical details, but presumably supports the  
9 analysis that had been provided by the company;  
10 correct?

11 A. Well, I don't think it's the same analysis  
12 that the company had, but it does talk about  
13 significant changes in the values on February 27th  
14 and 28th -- or 27th, at least.

15 Q. And you concluded, after reading reports  
16 from two of the largest banks in the world, that  
17 their reports seemed to support the company's  
18 analysis; right?

19 A. It doesn't have an analysis on the  
20 likelihood, but it certainly is consistent with the  
21 assertion that market -- the market declined  
22 significantly on that date.

23 Q. And that the chance of that occurring was  
24 extremely low; correct?

25 A. It was at its widest level since the summer

1 of 1986.

2 Q. I'd like to talk to you about the liquidity  
3 reports that counsel asked you about yesterday. You  
4 reviewed a number of liquidity reports during the  
5 restatement period; correct?

6 A. Correct.

7 Q. If we can go to Exhibit HT. Exhibit HT is  
8 a memo. Let's blow up the top. It's dated March 9,  
9 from the restatement period, and it's entitled "Test  
10 of operating effectiveness: Liquidity risk reports."  
11 Do you see that?

12 A. Yes.

13 Q. And this memorializes some work you did to  
14 review the company's liquidity reports; right?

15 A. To review controls around -- management's  
16 controls around their monitoring the cash process, so  
17 their liquidity.

18 Q. And as part of that, you actually did  
19 review a number of liquidity reports; right?

20 A. That's correct.

21 Q. And if we can -- under "Sample size  
22 selection," if you can highlight that first sentence.  
23 It says, "According to the KPMG audit manual, in  
24 situations where a manual control is performed on a  
25 daily basis, the suggested minimum sample size is 25

1 when the risk of failure is high." Then it says, "As  
2 this process was not implemented until late January  
3 2008, the dates sampled are from January 25 through  
4 March 7 of 2008." Do you see that?

5 A. Yes.

6 Q. And it says, "KPMG obtained the daily  
7 liquidity report from Ralph Ahn, assistant vice  
8 president and senior portfolio analyst"; right?

9 A. Correct.

10 Q. And so you obtained a number of daily  
11 liquidity reports. In fact, you obtained 25 of these  
12 from Mr. Ahn; right?

13 A. Yes.

14 Q. And you obtained them from him directly;  
15 right?

16 A. KPMG obtained them. I didn't personally  
17 obtain them. I'm not sure if that's direct or not.

18 Q. But a member of the engagement team was  
19 able to get those from Ralph Ahn; right?

20 A. Correct.

21 Q. They didn't come from Mr. Goldstone; right?

22 A. I don't know.

23 Q. They didn't come from Mr. Simmons, right?

24 Well, the memo doesn't say they came from anybody  
25 other than Mr. Ahn, correct?

1 A. That's correct.

2 Q. And you know that Mr. Ahn reported to Mr.  
3 Fellers; right?

4 A. Correct.

5 Q. Right. So Mr. Ahn didn't even report  
6 directly to Mr. Goldstone or Mr. Simmons; right?

7 A. Not directly, but the capital markets group  
8 reported to Clay Simmons.

9 Q. Correct. But KPMG -- my point is: KPMG  
10 was able to get these reports from the individual in  
11 charge of actually preparing them; correct?

12 A. That's correct.

13 Q. And if we can go to -- take a quick look at  
14 page 2, this is a list of the reports you obtained in  
15 order to test; correct?

16 A. That's correct.

17 Q. And so that lists 25 different reports  
18 scanning the period from the beginning of 2008  
19 through early March of 2008; right?

20 A. That's correct.

21 Q. And the tick marks next to those indicate  
22 that each one was reviewed; correct?

23 A. We obtained them as evidence that the  
24 company prepared them or was using them. I wouldn't  
25 say that we went and analyzed each of them.

1 Q. Then if we can go back to the first page,  
2 the very bottom paragraph, it says, "Based on the  
3 procedures performed, the control appears to be  
4 operating effectively." And this was your conclusion  
5 based on the review of the liquidity reports; right?

6 A. During the restatement period; that's  
7 correct.

8 Q. And then if we can go to Exhibit BZ. This  
9 is another list of the liquidity reports that members  
10 of your team reviewed during the restatement period;  
11 correct?

12 A. That's correct.

13 Q. And if we can go to the first comment  
14 below. It's a little small, but it says, "Jenni's  
15 comments regarding liquidity report." That's a  
16 reference to you; correct?

17 A. That's correct.

18 Q. And it says, "I can get 30 of these reports  
19 via Ralph's email distribution to management, inquiry  
20 and corroborative inquiry test. I currently have a  
21 copy of email distribution for 8/27 and 8/28." And  
22 would you agree those are typos, as well; right?

23 A. Yes.

24 Q. So it should be 2/27 and 2/28?

25 A. That's correct.



1 Q. "The only question is how long have they  
2 been doing this report for testing purposes, and do  
3 they retain them to the extent that we can pick a  
4 sample"; correct?

5 A. Correct.

6 Q. And you satisfied yourself that they did  
7 have them available for testing; right?

8 A. That's correct.

9 Q. And again, you were able to get these  
10 without any problem at all from the company; correct?

11 A. That's correct.

12 Q. And these forms -- after getting these  
13 reports -- you got these reports during the  
14 restatement period; right?

15 A. That's correct.

16 Q. And after getting these reports, you  
17 concluded, or you and KPMG concluded that there were  
18 no issues with management integrity; correct?

19 A. That's correct.

20 Q. And you concluded that there were no  
21 material weaknesses in the company's internal  
22 controls; correct?

23 A. Correct.

24 Q. Now, you testified yesterday -- you were  
25 asked, did you ever see a liquidity report projecting

1 any negative liquidity. Do you recall that question?

2 A. Yes.

3 Q. And your response was no.

4 A. That's correct.

5 Q. Do you recall that? And that's your  
6 testimony today, that you never saw a liquidity  
7 report projecting any negative liquidity?

8 A. Yes.

9 Q. Let's take a look at Exhibit GA. Now,  
10 Exhibit GA is a liquidity report dated February 14.  
11 Do you see that?

12 A. Yes.

13 Q. It shows beginning cash balance of \$78  
14 million. Do you see that?

15 A. Yes.

16 Q. And let's show what the projected ending  
17 cash balance is for that day. It shows negative \$2  
18 million; correct?

19 A. Correct.

20 Q. So that is a daily liquidity report with a  
21 negative balance, is it not?

22 A. It is.

23 Q. And let's go to the very bottom, to the  
24 Bates number on the document. Do you see what we  
25 lawyers call a Bates number?

1 A. Yes.

2 Q. That reflects that this document came from  
3 KPMG's own files, didn't it?

4 A. Yes.

5 Q. So your testimony is, I presume now, that  
6 somebody -- you may not have seen a daily liquidity  
7 report showing a negative balance, but somebody did;  
8 right?

9 A. During the restatement period; that's  
10 correct.

11 Q. Well, this doesn't say during the  
12 restatement period, does it?

13 A. I believe it was obtained as part of the  
14 restatement.

15 Q. And what's the basis for that? There is  
16 nothing on this document that shows that, is there?

17 A. Because I was the one looking at the  
18 liquidity reports during the audit, and I never saw  
19 one with a negative cash balance.

20 Q. Well, we're looking at one right here from  
21 KPMG's own files that shows a negative liquidity  
22 balance.

23 A. Which would have been obtained during the  
24 restatement period.

25 Q. But you just said you never saw one that

1 showed a negative liquidity balance.

2 A. I personally did not.

3 Q. Okay. So I guess you just missed this one.

4 A. Well, other people were doing the work.

5 Q. Okay. Now, when you testified yesterday  
6 that you never saw any liquidity report showing a  
7 negative liquidity balance, you didn't add the caveat  
8 that somebody else on the engagement team might have  
9 actually seen one, did you?

10 A. That's correct.

11 Q. Didn't you think that was an important  
12 piece of information for the jury to know?

13 A. I wasn't aware of a report that we had with  
14 a negative cash balance.

15 Q. Let's take a look at Exhibit GC just to  
16 satisfy ourselves that the one we just looked at  
17 isn't a total coincidence. This is another cash  
18 liquidity report. Do you see that?

19 A. Yes.

20 Q. And let's look at the date first. This is  
21 dated February 19, 2008. Do you see that?

22 A. Yes.

23 Q. And the beginning cash balance is \$5  
24 million; right?

25 A. Correct.

1 Q. Let's look at the next four lines, the next  
2 four lines down, yes. This shows a projected  
3 negative liquidity of negative \$76 million, negative  
4 \$59 million, negative \$57 million, and negative \$55  
5 million. Do you see that?

6 A. Yes.

7 Q. Let's look and see where this document came  
8 from. This document also came from KPMG's files;  
9 correct?

10 A. Correct.

11 Q. And so this is another negative liquidity  
12 report that apparently members of your team reviewed  
13 and didn't tell you about; correct?

14 A. During the restatement period.

15 Q. Well, what makes you so sure this was  
16 during the restatement period?

17 A. Because I was the one looking at the daily  
18 liquidity reports during the audit period. I was not  
19 given this report.

20 Q. Is there anything on this report that shows  
21 when you were given it and when you reviewed it?

22 A. I'm going by my memory during the audit.  
23 Not by this document, other than understanding what  
24 this document shows and knowing that I did not see  
25 this report.

1 Q. And it's your testimony today that eight  
2 years later you remember that you didn't review a  
3 daily liquidity report dated February 19? You have  
4 that clear memory in your head?

5 A. It's not the date. It's the fact that  
6 there is a \$79 million margin call and a \$76 million  
7 negative number that I know I did not see.

8 Q. Well, you're not disputing that these came  
9 from KPMG's files; right?

10 A. Files that included the restatement period.

11 Q. And you're not disputing that there is  
12 nothing accompanying either of these daily liquidity  
13 reports that shows when you received them; correct?

14 A. Correct.

15 Q. And you testified yesterday -- you didn't  
16 qualify your testimony. You said -- you were asked,  
17 did you ever see a liquidity report projecting any  
18 negative liquidity. Did you ever see a liquidity  
19 report projecting any negative liquidity, and you  
20 answered no.

21 A. I didn't --

22 Q. Do you recall that?

23 A. I recall, and that's true.

24 Q. You just testified you saw this during the  
25 restatement period.

1 A. I did not say I saw it.

2 Q. So you -- somebody else on your team saw  
3 this.

4 A. Yes.

5 Q. And they just didn't tell you about it.

6 A. Yes.

7 Q. And when you answered that you never saw a  
8 daily liquidity report projecting any negative  
9 liquidity, did it occur to you to add the caveat,  
10 just as a matter of fairness to my clients, "You know  
11 what? Somebody on my team might have actually seen  
12 one, because I didn't personally review all of them"?  
13 Wouldn't that have been the more fair thing to say?

14 A. I wasn't aware that there were reports with  
15 negative cash balances that we had.

16 Q. Now, let's go to Exhibit OD. Exhibit OD,  
17 would you agree with me, is a draft of the Thornburg  
18 going concern memo -- of the KPMG going concern memo  
19 about Thornburg, that is?

20 A. That is correct.

21 Q. And you reviewed this draft; correct?

22 A. Yes.

23 Q. And let's go to the Bates ending 705. And  
24 these are a variety of comments that were inserted by  
25 various people. Whoever was commenting on this draft

1 could go into the documents and add comments; right?

2 A. That's correct.

3 Q. And one of the comments says, "The cash  
4 balance around February 21, 2008, is very tight,  
5 projected to be \$476,000." Do you see that?

6 A. Yes.

7 Q. And you would agree with me that a lot of  
8 the numbers on the daily liquidity reports -- they're  
9 in thousands, so you add three zeroes; right?

10 A. Right.

11 Q. So if it says 5,000, it actually means \$5  
12 million?

13 A. Right.

14 Q. On this document this comment actually  
15 means \$476,000; right?

16 A. I believe so, yes.

17 Q. And so on -- and you see how it's dated  
18 February 21, 2008?

19 A. Yes.

20 Q. So on February 21, 2008, somebody at KPMG  
21 was aware that the cash balance as of that date was  
22 projected to be only \$476,000; right?

23 A. Correct.

24 Q. And now let's go to Exhibit -- let's keep  
25 that up and go to Exhibit 00. So Exhibit 00 is



1 another draft of the KPMG going concern memo; right?

2 A. Correct.

3 Q. And if we can go to the page ending --  
4 we've seen this a few times in this trial -- 826, and  
5 that is dated -- that's another comment inserted by  
6 somebody at KPMG; right?

7 A. Right.

8 Q. Dated February 23, 2008; right?

9 A. Correct.

10 Q. And that reads, "The company has had around  
11 \$250 million in margin calls in the last week or so,  
12 covered by the recent equity offerings"; right?

13 A. Correct.

14 Q. And so by then, KPMG knew -- or members  
15 of -- either you or members of your engagement team  
16 knew that as of just less than two days -- basically  
17 a day before the company had projected cash balance  
18 of less than half a million dollars, and as of a day  
19 later the company -- KPMG is also recognizing that  
20 the company has had around \$250 million in margin  
21 calls; right?

22 A. Correct.

23 Q. So you knew by then that if Thornburg  
24 received a margin call of any size at all, that it  
25 would exceed the amount of cash on hand; correct?

1           A.     Well, they're on different days, and we're  
2     looking at their inflows and outflows of cash. So we  
3     looked and saw that they had tight cash; went and  
4     talked to the company who described, you know, that  
5     their pattern of cash does increase and decrease  
6     throughout the month as part of their normal cycle.  
7     So that was part of the understanding. And then I --  
8     then, yes, we knew that they had received -- that  
9     part of the reason that their cash was so low was  
10    that they had received this elevated amount of margin  
11    calls.

12           Q.    And now let's take a look at Exhibit AS.  
13    Now, Exhibit AS is the final KPMG going concern memo;  
14    correct?

15           A.    Correct.

16           Q.    And we've looked at this before and this  
17    was from you to the audit file; correct?

18           A.    Yes.

19           Q.    If we can go to the page Bates 1408, and I  
20    want to ask you some questions about the degree to  
21    which you relied on these cash projections at all.  
22    Now, you see about the middle of the page the  
23    highlighted language says, "As discussed above, the  
24    company projects a positive cash balance through the  
25    end of the report, April 10, 2008, of \$377 million.

1 The report is a management tool to make appropriate  
2 decisions on a day-to-day basis."

3 I want to draw your attention to that next  
4 sentence. It says, "It is not relied upon to predict  
5 a cash balance with any level of precision beyond a  
6 week or so." Do you see that?

7 A. Yes.

8 Q. And that was true at the time you wrote  
9 that; correct?

10 A. Correct.

11 Q. And then that point was, it wasn't enough  
12 to just mention the fact that you don't actually rely  
13 on these cash reports once. You had to repeat it  
14 again at the end of that paragraph. And that is why  
15 it says, "Again, these projections were not relied  
16 upon as audit evidence, but used for informational  
17 purposes only." Do you see that?

18 A. Correct.

19 Q. And that's what you believed back then;  
20 correct?

21 A. I was making the distinction of --  
22 sometimes when we use financial projections from  
23 management, we'll go and test the assumptions  
24 underneath those and we do in-depth testing of them.  
25 But in this case we were just considering the reports

1 and the information we have. So it's not something  
2 that we would look and go try to test, you know, the  
3 assumptions throughout the whole period.

4 Q. And you would agree that "audit evidence"  
5 is actually an auditing term; right?

6 A. Yes.

7 Q. It's not just a colloquial term. "Audit  
8 evidence" is a specific term; right?

9 A. That's correct.

10 Q. So you were not considering these liquidity  
11 reports as audit evidence.

12 A. Right. We were considering the  
13 information.

14 Q. But not as audit evidence.

15 A. Not in the sense that we were going to do  
16 substantive testing on it.

17 Q. Not as audit evidence.

18 A. That's correct.

19 Q. And so again, I assume you're interested in  
20 Mr. Goldstone and Mr. Simmons having a fair trial;  
21 correct?

22 A. Correct.

23 Q. When the SEC asked you a number of  
24 questions about the liquidity reports and how they  
25 showed all these positive cash balances going ahead

1 in time, you didn't mention that, in fact, you didn't  
2 even rely on these cash projections as audit  
3 evidence, did you?

4 A. Well, we certainly considered them as part  
5 of our audit.

6 Q. That wasn't my question, Ms. Hall. My  
7 question is: You didn't even mention -- when the SEC  
8 asked questions about these, you didn't even mention  
9 that you don't actually -- you didn't actually  
10 consider these as audit evidence, did you?

11 A. We didn't consider it audit evidence to the  
12 extent of projecting out 45 days or beyond. That was  
13 the point here.

14 Q. And you didn't mention that you don't even  
15 rely on these cash balances to have any level of  
16 precision at all beyond about a week or so. You  
17 didn't mention that, did you?

18 A. I didn't mention that, no.

19 Q. And don't you think it would have been more  
20 fair to actually have told the jury that -- given the  
21 jury the full picture of what you actually did with  
22 these liquidity reports?

23 A. I'm answering the questions as I'm asked  
24 them.

25 Q. All right. We can take that down.

1 I'd like to turn your attention now to what  
2 we've been referring to as the subsequent events  
3 disclosure. Okay?

4 A. Okay.

5 Q. And just to sort of lay the groundwork, the  
6 concept of subsequent events in this case is the  
7 period from January 1 to the filing of the Form 10-K  
8 on the morning of February 28; right?

9 A. Yes.

10 Q. That is the subsequent events period.  
11 That's what the term means in this case; right?

12 A. That's correct.

13 Q. In this case, there was a disclosure in the  
14 Form 10-K about events that had occurred during the  
15 subsequent events period; right?

16 A. Correct.

17 Q. And in fact, that disclosure, various forms  
18 of that disclosure, occurred in three different  
19 places in the Form 10-K. Do you recall that?

20 A. Yes.

21 Q. It occurred in the section called "Recent  
22 developments"; right?

23 A. Right.

24 Q. There was another disclosure in a section  
25 of the Form 10-K called "Liquidity and capital

1 resources." Do you recall that?

2 A. Yes.

3 Q. And there was another disclosure in the  
4 footnotes to the financial statements called  
5 "Subsequent events"; right?

6 A. Right.

7 Q. And they were variations of essentially the  
8 same language; right?

9 A. Yeah, there was more on the recent  
10 development in the liquidity section than the  
11 footnote, but the margin calls and the decline in  
12 fair value securities was disclosed in each of them.

13 Q. And the portion that occurred in the  
14 footnotes through the financial statements, the  
15 subsequent events footnote, was actually covered by  
16 KPMG's audit opinion; correct?

17 A. That's correct.

18 Q. Now, this language originated with a draft  
19 prepared by Thornburg; right?

20 A. That's correct.

21 Q. Let's take a look at Exhibit CA. And the  
22 bottom email is an email that I believe you testified  
23 about yesterday. And that is Ms. Starrett to you  
24 with a copy to Mr. Simmons, Ms. Jacquez, and Mr.  
25 Coltharp on February 26 at 7:19 in the evening,

1 attaching a draft of the company's proposed language  
2 to be included in the Form 10-K about what had  
3 happened during the subsequent event period; is that  
4 right?

5 A. That's correct.

6 Q. Then you turned around and you forwarded  
7 that same -- late at night or early in the morning,  
8 within approximately seven hours, six hours of having  
9 received it, you forwarded it to Mr. Womack; right?

10 A. I don't know if the date stamps really  
11 relate to each other like that. But I would have  
12 forwarded it recently after getting it.

13 Q. And you would have forwarded it pretty  
14 quickly; right?

15 A. Yeah, I would have.

16 Q. And it says, "Clyde, the attached is the  
17 draft version of the recent developments section.  
18 They indicated" -- and the "they" there is somebody  
19 at Thornburg; right? When you wrote "they"?

20 A. Yes.

21 Q. "They indicated that they were going to put  
22 in the subsequent event footnote, but we think they  
23 should tailor it down for the footnote to a few  
24 sentences"; right?

25 A. Correct.



1 Q. And if we look at the language, if we go to  
2 the next page, that the company drafted and  
3 proposed -- actually, let's blow it up and just show  
4 the whole page. You can see that that is more than a  
5 few sentences; right?

6 A. Correct.

7 Q. So the company's first draft included  
8 substantially more information than you believed was  
9 appropriate to include in the footnote; correct?

10 A. Correct.

11 Q. And then if we -- let me just highlight  
12 just a few of these sentences. The first sentence  
13 says, "Beginning on February 14, 2008, there was once  
14 again a sudden and unexpected adverse change in  
15 mortgage market conditions in general and more  
16 specifically in the valuations of mortgage securities  
17 backed by Alt-A mortgage collateral." Do you see  
18 that?

19 A. Yes.

20 Q. And then down in the middle of the page it  
21 says, "Accordingly, market valuations of these  
22 securities have dropped by between 10 and 15 percent  
23 in recent days, and as a result, we have been subject  
24 to margin calls on this collateral." And then the  
25 next sentence refers to the amount of margin calls,

1 which Ms. Starrett had pointed out was still in draft  
2 form.

3 And then let's take a look at the very  
4 bottom paragraph. "However, as discussed above,  
5 mortgage security market valuations remain volatile,  
6 mortgage securities trading remains limited, and  
7 mortgage securities financing markets remain  
8 challenging as the industry continues to report  
9 negative news."

10 So this was all being -- this extremely  
11 negative language was being proposed by the company's  
12 management to be included in the Form 10-K; is that  
13 right?

14 A. That's correct.

15 Q. And when you received this, you knew that  
16 it was essentially a work in progress, right, the  
17 draft?

18 A. Yes.

19 Q. And in fact, Ms. Starrett's cover email  
20 points out that it's a draft; right?

21 A. Correct.

22 Q. And this was to be included in a document  
23 that was to be filed not that moment, but in a couple  
24 of days hence; right?

25 A. Right. The next day.

1 Q. And in any event, everyone's goal was that  
2 it would be included in a document that would be  
3 filed two days from then, by February 29, which was  
4 the actual due date; right?

5 A. I'm sorry, can you repeat the question?

6 Q. You're aware that the actual filing date,  
7 filing deadline for the company Form 10-K, was  
8 February 29; right?

9 A. Correct.

10 Q. And so this draft was to be included in a  
11 document that everyone understood could have been  
12 filed as late as February 29 and still have been on  
13 time; right?

14 A. Correct.

15 Q. And now let's go to Exhibit BT. And let's  
16 start from the bottom. Let's go to the very bottom.  
17 Yeah, perfect.

18 Okay. So the very bottom email in this  
19 chain is an email from Ms. Reinhart to you February  
20 26, at 8:05 p.m. Do you see that?

21 A. Yes.

22 Q. And this would appear to be a shortened  
23 version of the disclosure that the company had  
24 provided to you; right?

25 A. That's correct.

1 Q. And so it appears that Ms. Reinhart had  
2 actually tried to condense all of the information  
3 that the company provided into a few sentences;  
4 right?

5 A. We drafted language to have a concise  
6 disclosure about the decline in values and the margin  
7 calls.

8 Q. And you see how this concise version  
9 eliminates a lot of the very negative and cautionary  
10 language that management had included; right?

11 A. Right. We felt that that was more relevant  
12 to be in the MD&A section.

13 Q. And then let's go up to the next email.  
14 Ms. Reinhart forwards it to Mr. Womack with a copy to  
15 you and Ms. Baucom. She says, "A more condensed  
16 version for the subsequent events footnote. Let me  
17 know what you think."

18 And Mr. Womack responds, "This seems okay  
19 to me." Right?

20 A. Correct.

21 Q. And then if we go to the top, Ms. Reinhart  
22 says, "We will send another slightly different  
23 version shortly."

24 And you then forward, it looks like, as  
25 attachments Word documents with both versions, both

1 the shorter version and the longer version of the  
2 disclosure; right?

3 A. Correct.

4 Q. And then let's go to the very last page of  
5 the document. And do you see the very first  
6 sentence?

7 Highlight the very first sentence.

8 It again has the language about what  
9 happened on February 14; right?

10 A. Correct.

11 Q. And now, you see there are a bunch of  
12 comment bubbles on the right-hand side. Do you see  
13 that?

14 A. Yes.

15 Q. And let's go to the very first actual  
16 comment, the very first substantive comment. It says  
17 K-1. Can you blow that up?

18 Now, somebody from KPMG made a comment that  
19 said, "Do you still believe the company has the  
20 intent and ability to hold these mortgage securities  
21 backed by Alt-A mortgage loan collateral through  
22 recovery?" Correct?

23 A. Correct.

24 Q. And you don't recall specifically who made  
25 that comment; right?

1 A. Correct.

2 Q. But it was either yourself or Ms. Reinhart  
3 or Mr. Womack; correct?

4 A. Correct.

5 Q. And so this reflects that KPMG was  
6 specifically focused on the potential effect of the  
7 distressed mortgage markets on the company's intent  
8 and ability to hold; correct?

9 A. Correct.

10 Q. And that means that KPMG was specifically  
11 focused on the effect of the distressed mortgage  
12 markets on the company's OTTI; correct?

13 A. Correct.

14 Q. And let's go back to the email chain. In  
15 your internal discussions among your colleagues at  
16 KPMG, no one said, "Wait a second, we've never heard  
17 about \$350 million in margin calls," did they?

18 A. No.

19 Q. And no one said, "Wait a second. We had no  
20 idea the mortgage markets were this distressed," did  
21 we?

22 A. No.

23 Q. And no one said, "Wait a second. We had no  
24 idea that the value of the company's Alt-A collateral  
25 had declined that significantly"; correct?

1 A. Correct.

2 Q. In fact, this was treated by KPMG as  
3 something that you at KPMG already knew; correct?

4 A. Right. It was consistent with what we  
5 understood.

6 Q. And no one at KPMG said, "Wait a second, we  
7 didn't know your liquidity levels were at extremely  
8 low levels"; right?

9 A. That's correct.

10 Q. And that comment bubble that said, "Do you  
11 still believe the company has the intent and ability  
12 to hold," you satisfied yourself -- you satisfied  
13 yourself that the company did have the intent and  
14 ability to hold these mortgage securities; correct?

15 A. Correct.

16 Q. You specifically considered the issue in  
17 light of the very candid disclosures that the company  
18 was providing about the distressed mortgage markets,  
19 and you still concluded to your satisfaction that the  
20 company had the ability and intent to hold; correct?

21 A. Correct.

22 Q. Now, let's go to Exhibit CB. And let's  
23 just start at the very bottom, just quickly. I think  
24 it's -- there is a second page about -- maybe go to  
25 the top, that one and the email above.

1           So I'm just trying to illustrate here that  
2       this email chain that we're about to look at is a  
3       continuation or a different thread on the same email  
4       chain we looked at in the last exhibit; right?

5           A.     Correct.

6           Q.     This is from Ms. Reinhart with the  
7       condensed version of the disclosure, and she sends it  
8       to you, and so on; correct?

9           A.     Right.

10          Q.     Now let's go up to the bottom two emails on  
11       the first page, the bottom two emails. Okay. So the  
12       bottom email is the one where you forward the  
13       attachments with the draft disclosures; right?

14          A.     Correct.

15          Q.     And then above that is a response from  
16       Mr. Womack. Do you see that?

17          A.     Yes.

18          Q.     And he responds later that evening. He  
19       says, "I am okay with this, but does this change our  
20       thinking on the going concern analysis?" Do you see  
21       that?

22          A.     Yes.

23          Q.     So he responds just a couple of hours after  
24       you sent it to him; right?

25          A.     It looks like that, yes.



1 Q. He didn't say, "Wait a second. I need more  
2 time to review this," did he?

3 A. No.

4 Q. He was able to review it and comment on it  
5 almost immediately; right?

6 A. Correct.

7 Q. So he's asking you a question. "Does this  
8 change our thinking on the going concern analysis?"

9 Now, let's see how you respond. You  
10 respond just about an hour later and you say, "No, we  
11 knew about the circumstance during our analysis.  
12 We'll clarify the memo to make that clear." That was  
13 your response; right?

14 A. Yes.

15 Q. You didn't say, "This information has come  
16 as a total surprise to us"; right?

17 A. No, we knew the market was dislocated. We  
18 knew they were receiving margin calls. We knew there  
19 was a decline in those Alt-A securities.

20 Q. And you knew their liquidity was extremely  
21 low; correct?

22 A. Correct.

23 Q. And you didn't say to him, "I can't tell  
24 you whether this changes my thinking on the going  
25 concern analysis, because I've been waiting for this

1 disclosure, and I just received it, and now I need to  
2 go take into account that information and analyze  
3 it"; right?

4 A. Correct.

5 Q. You responded within one hour and said,  
6 "No, this doesn't change anything"; right?

7 A. Right.

8 Q. And then if we can go up to Mr. Womack's  
9 response to you, he then responds early in the  
10 morning, so a few hours later. He says, "Whatever  
11 makes the most sense as to disclosure so there is no  
12 doubt as to the situation"; right?

13 A. Correct.

14 Q. And again, he doesn't ring any alarm bells,  
15 either, does he?

16 A. No.

17 Q. Now let's go to Exhibit CC. And this is --  
18 that are a lot of threads on this email, but the  
19 bottom email is the same email that we saw in which  
20 Ms. Starrett forwards to you the first draft of the  
21 language; right?

22 A. Correct.

23 Q. And then let's go to your response to her,  
24 if we can blow up the response. Now, you respond  
25 early the next morning; right?

1 A. Yes.

2 Q. So less than 12 hours after you receive the  
3 draft; right?

4 A. Correct.

5 Q. And by then you've already conferred with  
6 Ms. Reinhart and Mr. Womack; right?

7 A. Correct.

8 Q. And you've gotten their signoff on it;  
9 right?

10 A. Yes.

11 Q. And you respond to Ms. Starrett with a copy  
12 to Mr. Simmons, Ms. Jacquez, Mr. Coltharp, and Ms.  
13 Reinhart, "Looks good. We added some minor changes  
14 and a couple comments"; right?

15 A. Yes.

16 Q. And you said, "You were right. After  
17 reading the wording, it is probably a little overkill  
18 for the footnote. Attached is a suggested condensed  
19 version for the footnote disclosure." Do you see  
20 that?

21 A. Yes.

22 Q. You didn't express any surprise to  
23 Ms. Starrett about the information contained in the  
24 draft disclosure, did you?

25 A. No.

1 Q. You didn't express concern about the fact  
2 that they hadn't told you that the company had  
3 received \$350 million in margin calls in just less  
4 than a two-week time period, did you?

5 A. No.

6 Q. You didn't express concern about the fact  
7 that the company was telling you how bad the mortgage  
8 markets had gotten, did you?

9 A. No, we knew that there was dislocation in  
10 the market.

11 Q. You didn't express concern about the fact  
12 that the company included in its disclosure and told  
13 you that they might have to selectively sell assets  
14 to raise cash, did you?

15 A. I believe that's when we asked the question  
16 about intent and ability.

17 Q. And you didn't express any concern or  
18 surprise to Ms. Starrett about the low levels of  
19 liquidity, did you?

20 A. That's correct.

21 Q. And yesterday, when you testified that you  
22 would have liked more than a couple of days to have  
23 reviewed this disclosure, do you recall that?

24 A. I described that they were providing the  
25 disclosure to the attorneys, so I believed that if

1 they provided it to the attorneys, they could provide  
2 it to us.

3 Q. But you also said -- or the SEC got you to  
4 say that, "Yes, I would have liked more than a couple  
5 of days to review this"; right?

6 A. In my mind, it's the information about the  
7 margin calls that would have been good to have time  
8 to review.

9 Q. Right. You said more than a couple of days  
10 to review; right?

11 A. Right.

12 Q. And you made a big point about the fact  
13 that this came in just a couple of days before the  
14 filing date; right?

15 A. This came in a few days before. The detail  
16 about the margin calls came right at the end.

17 Q. But this came in just a couple of days  
18 before the filing date, and the SEC tried to get you  
19 to make a big deal out of the fact that it came in  
20 very late; right?

21 A. That's what we discussed, yes.

22 Q. And in fact, you didn't need a couple of  
23 days to review this, did you? You needed less than  
24 12 hours to review this and sign off on it; correct?

25 A. We were able to, yes.

1 Q. And you reviewed it within -- with your  
2 colleagues within, we saw, a couple of hours; right?

3 A. Correct.

4 Q. And you had no concerns about the  
5 disclosure; correct?

6 A. Right, other than the question about intent  
7 and ability.

8 Q. Right, which you satisfied; correct?

9 A. Correct.

10 Q. And again, you said you're interested in a  
11 fair trial for my clients. When you testified that  
12 you would have liked more time to review this and  
13 made it sound like it was coming in at the very last  
14 minute, you didn't think it was a more fair thing to  
15 tell the jury that, in fact, you were able to sign  
16 off on it in a couple of hours and there was nothing  
17 in there that was surprising to you?

18 A. My concern was about the information  
19 provided about the margin calls that was provided at  
20 the very end. I don't understand why they would have  
21 waited to provide us a disclosure anyway.

22 Q. But in the end, it didn't matter, did it?  
23 Because you signed off on it in a few hours.

24 A. We were able to review it, yes.

25 Q. Now, you were asked a number of questions

1 about the company's going concern analysis and KPMG's  
2 going concern conclusion; right?

3 A. Correct.

4 Q. So I'd like to turn to that topic. You  
5 would agree that the determination of whether an  
6 entity is a going concern was, in early 2008, solely  
7 the auditor's responsibility; correct?

8 A. There is other guidance for management for  
9 their need to disclose significant risks. They don't  
10 use the term "substantial doubt" about going concern.  
11 That's not in the accounting standards. But in the  
12 auditing standards the going concern assessment  
13 requirements are for auditors.

14 Q. Right. And so let's take a look. So I  
15 think you've already covered the analysis and work  
16 that you and your team did to reach a conclusion on  
17 going concern; right?

18 A. Okay.

19 Q. Just generally, you talked about that  
20 yesterday. Do you recall that?

21 A. Yes.

22 Q. Let's take a look at Exhibit BM and let's  
23 go to the bottom email. Now, you testified yesterday  
24 that the company prepared a going concern memo which  
25 KPMG analyzed and then KPMG wrote up its own memo;

1 right?

2 A. That's correct.

3 Q. And so this document, this email, dated  
4 February 19 is transmitting to Mr. McLamb and Ms.  
5 Reinhart a draft of the company's going concern memo.  
6 Do you see that?

7 A. Yes.

8 Q. And let's take a look at the second  
9 sentence of that email, and it says, "It has been  
10 reviewed by John Taylor and we are in the process of  
11 testing the assumptions and key data within their  
12 analysis." Do you see that?

13 A. Yes.

14 Q. And Mr. Taylor was the industry sort of  
15 expert on the team; right?

16 A. He was our technical topic expert.

17 Q. And that means sort of in plain English  
18 that he had particular experience and expertise with  
19 companies like Thornburg?

20 A. With the accounting issues being addressed,  
21 yes.

22 Q. With the accounting issues; correct. So  
23 you were asking Mr. Taylor to review -- or you had  
24 asked Mr. Taylor to review the company's analysis, to  
25 bring his expertise to it; correct?



1 A. Correct.

2 Q. And now let's go up to the next -- well,  
3 okay. Now, let's go on to Exhibit AM. We'll come  
4 back to that, to Exhibit BM later. Now, Exhibit AM,  
5 as we'll see in a second, is a draft, another draft  
6 of Thornburg's going concern memo; correct?

7 A. Correct.

8 Q. And the reason it was to Jennifer Hall from  
9 Steve Hall is that you were either faxing or emailing  
10 yourself handwritten comments on the memo; right?

11 A. Correct.

12 Q. So now let's go to the next page. And you  
13 see there are handwritten notes on this page. Those  
14 are your notes; correct?

15 A. That's correct.

16 Q. Now, let's turn to page -- and this is, by  
17 the way -- the memo is dated January 29. Do you see  
18 that?

19 A. Yes.

20 Q. And the fax or the transmittal is not  
21 dated, so we don't know exactly what date you were  
22 sending it to yourself; right?

23 A. Correct.

24 Q. Okay. Now let's go to the Bates ending 315  
25 at the very top, the first full paragraph. And let's

1 go to the sentence that is circled. It says, "Margin  
2 calls made or received are being met and the change  
3 in collateral value is being verified on a normal  
4 daily basis." Do you see that?

5 A. Yes.

6 Q. And you circled the part of the sentence  
7 that says, "Margin calls made or received are being  
8 met," and you wrote, "Should we get a list"; right?

9 A. Correct.

10 Q. And that was essentially a note to yourself  
11 to actually get a list; right?

12 A. Right.

13 Q. And that's what prompted you to get a list  
14 of the company's margin call activity; correct?

15 A. That's why I went and asked Nate Fellers  
16 for a list.

17 Q. And that's the list -- you eventually did  
18 get that list; right?

19 A. Well, my understanding was that there  
20 wasn't a list. We were then in discussions with  
21 management about the margin calls, the need to  
22 disclose the calls, and requested support for that  
23 disclosure. And so my understanding was the list  
24 didn't exist; they were working on it, compiling it.  
25 And then ultimately at the end they provided it to

1 support the disclosure.

2 Q. And more specifically, Mr. Fellers told you  
3 that capital markets didn't keep a list, but they  
4 were able to get one from accounting; correct?

5 A. No, I don't think he said that.

6 Q. Well, your understanding is, even though he  
7 said capital markets didn't have a list, you did get  
8 one from accounting; correct?

9 A. Ultimately, yes.

10 Q. So Mr. Fellers wasn't refusing your  
11 request, was he?

12 A. No, he indicated they didn't have it.

13 Q. And then you eventually -- the company  
14 provided it to you; correct?

15 A. At the end, yes.

16 Q. Okay. So you had specifically called out  
17 the importance of getting that list; right?

18 A. I had thought about getting that list, yes.

19 Q. And then if we can go to the last sentence  
20 of that paragraph, or the last sentence of the  
21 following paragraph, sorry, it says, "The company has  
22 made all margin calls to date." Do you see that?

23 A. Yes.

24 Q. Then you circled that. And you also write  
25 "Get a list"; right?

1 A. I believe so, yes.

2 Q. And again, you recognize the importance of  
3 understanding the company's margin call activity;  
4 right?

5 A. I thought it would be helpful, yes.

6 Q. Then if we can go to the Bates ending 320.  
7 Now, do you recognize that table?

8 A. Yes.

9 Q. That table is the breakdown of the \$428  
10 million in unrealized losses, or of impairments on  
11 the company's securities that are at issue in this  
12 case; correct?

13 A. Correct.

14 Q. And this table shows that the company has  
15 decided to treat them as unrealized losses which  
16 would be reported in the company's financial  
17 statements on the balance sheet; right?

18 A. That's correct.

19 Q. And this footnote is the footnote that  
20 eventually does get included in the Form 10-K; right?

21 A. Correct.

22 Q. And you're aware that the company had  
23 decided to treat these impairments in that manner;  
24 right?

25 A. Yes.

1 Q. And you signed off on that; right?

2 A. Yes.

3 Q. And then let's go to your handwritten note  
4 where it says, "The company has the ability." You  
5 write, "The company has the ability to hold these  
6 securities based on the same liquidity and margin  
7 call considerations discussed above"; right?

8 A. Correct.

9 Q. And so that was something you specifically  
10 considered; right?

11 A. Yes.

12 Q. And you were suggesting that that  
13 disclosure be included; right?

14 A. Yes. If that was their assertion, we want  
15 them to document it.

16 Q. Let's go to Exhibit AV and to go to the  
17 very top email. And so this is, again, a  
18 transmission to Mr. McLamb of the Thornburg going  
19 concern memo; right?

20 A. Correct.

21 Q. And you write, "The key area we are  
22 focusing on is their liquidity risk. The potential  
23 for further declines in their securities pledged  
24 against short-term debt which would trigger margin  
25 calls and whether their current liquidity position

1 could meet those margin calls"; right?

2 A. Correct.

3 Q. And so again, this reflects that you were  
4 specifically focused on the margin calls the company  
5 had received and the risk of additional margin calls;  
6 right?

7 A. Correct.

8 Q. Now let's go to page -- the Bates ending  
9 3103; right? Now, let's blow up that paragraph with  
10 the highlighted sentence.

11 Now, counsel for the SEC asked you about  
12 that sentence that reads, "Margin calls made or  
13 received are being met and the change in collateral  
14 value is being verified on a normal daily basis";  
15 right?

16 A. Correct.

17 Q. And you would agree with me that the  
18 sentence could be read in one of two ways; right? It  
19 could be read, "Margin calls made or received are  
20 being met, and the change in collateral value is  
21 being verified on a normal daily basis." So in other  
22 words, it's only the change in collateral value  
23 that's being verified on a normal daily basis.  
24 That's one way of reading that sentence; right?

25 A. Right. I wouldn't think you'd verify -- I

1 mean, I think verifying on a normal daily basis  
2 relates to the collateral value.

3 Q. Right. But the way that the SEC tried to  
4 get you to interpret that was to say, "Margin calls  
5 made or received are being met on a normal daily  
6 basis"; right?

7 A. Well, I was looking at margin calls made or  
8 received being met. That implies that they're -- as  
9 they receive them, they meet them.

10 Q. But it doesn't say anything about the  
11 timing of their meeting those, does it?

12 A. No.

13 Q. So would you agree that that sentence is a  
14 little ambiguous as to what it meant?

15 A. It's always open to interpretation.

16 Q. And now let's go to the first page of that  
17 memo itself. You've seen that before. You see that  
18 the memo was actually drafted by Shawn Buniel;  
19 correct?

20 A. Correct.

21 Q. And you never went to Shawn Buniel to ask  
22 him exactly what he meant; right?

23 A. I had conversations about margin calls with  
24 him. We didn't discuss that particular sentence.

25 Q. And so to this day, you don't know what the

1 author of the memo actually meant when he wrote that  
2 sentence, do you?

3 A. I believe he was saying that they're  
4 meeting the margin calls as they receive them.

5 Q. But you never actually asked Mr. Buniel  
6 about the ambiguity in that sentence, did you?

7 A. No.

8 Q. Now let's go to Exhibit AS. This is the  
9 final KPMG going concern memo; right?

10 A. Correct.

11 Q. And we've already looked at this a couple  
12 of times. And there is a lot here, and I'm not going  
13 to go through it all because the jury will have this  
14 available to them. But I just want to highlight a  
15 few portions of it.

16 So let's go to the paragraph at the bottom  
17 of that first page called "Identification of going  
18 concern uncertainties." It says, "In August 2007,  
19 worldwide money markets were severely dislocated due  
20 to concerns over increasing default rates on subprime  
21 mortgage loans and securitizations"; right?

22 A. Correct.

23 Q. Then it says, "That concern carried over to  
24 generally all mortgage-backed products that were not  
25 government-guaranteed"; right?



1 A. Correct.

2 Q. And so you were aware of the dynamic that  
3 had hit Thornburg, that the genesis or the trigger  
4 for the concern was only in subprime, but that it was  
5 having essentially a ripple effect. Fair to say?

6 A. Yes.

7 Q. And then let's go to the next page, to the  
8 carryover, to the last two sentences of the carryover  
9 paragraph. And the last two sentences refer again to  
10 the events of August 2007, right, and the fact that  
11 the company sold assets?

12 A. Yes.

13 Q. And reported a loss; right?

14 A. Yes.

15 Q. And again, these were factors that  
16 influenced or you took into account in your going  
17 concern analysis; right?

18 A. Correct.

19 Q. Let's go to page 1405, the top paragraph.  
20 It says, "The audit team has confirmed all debt with  
21 existing lenders or performed alternative procedures  
22 to test the completeness of the debt balances." Do  
23 you see that?

24 A. Yes.

25 Q. And so that was something that KPMG

1 specifically did; right?

2 A. Right, as of December 31.

3 Q. Well, let's look at the next sentence. It  
4 says, "We obtained a schedule from the lender, CSFB,  
5 showing that the company has available committed  
6 capacity of \$300 million as of February 25, 2008";  
7 right?

8 A. Correct.

9 Q. So presumably you obtained that after  
10 December 31.

11 A. Yes.

12 Q. In fact, you obtained that very close to  
13 the filing date; right?

14 A. Correct.

15 Q. Let's go to the last full paragraph where  
16 it says, the last couple of sentences beginning in  
17 the middle, "However, Thornburg was able to close a  
18 securitization in August of 2007 and October 2007.  
19 The company is working on another securitization with  
20 an expected closing date of February 28. This timing  
21 of completing one securitization per quarter is  
22 consistent with past experience, although current  
23 market conditions have made it more difficult  
24 essentially."

25 A. Correct.

1 Q. Okay. So you were aware of the company's  
2 historic pattern over time of being able to complete  
3 securitizations; right?

4 A. Yes.

5 Q. And you were aware that the company had  
6 been able to complete a securitization even in the  
7 midst of the turmoil of August of 2007; right?

8 A. Correct.

9 Q. KPMG actually had a specialist who had  
10 particular experience with securitizations; right?

11 A. Yes.

12 Q. And let's go to the top sentence of the  
13 next paragraph -- of the next page. Actually, let's  
14 go to the bottom paragraph, where it says, "KPMG's LA  
15 structured finance group." That refers to a group at  
16 KPMG that has particular expertise in  
17 securitizations?

18 A. Correct.

19 Q. And it says, "The engagement team has  
20 inspected email correspondence from the underwriters'  
21 counsel and the company's counsel regarding the  
22 logistics of the securitization and estimated closing  
23 date. Per discussion with Tim Stoliar" -- he's the  
24 specialist I asked you about?

25 A. She is, yes.

1 Q. Tina. I'm sorry. "The project is moving  
2 along and is expected to close within the next couple  
3 of weeks, early March." Do you see that?

4 A. Yes.

5 Q. So you were also aware of that and took  
6 that factor into account in reaching your going  
7 concern conclusion; correct?

8 A. Yes.

9 Q. Then under "Liquidity position" let's go to  
10 that next paragraph. Actually, let's take that first  
11 sentence. It says, "As of December 31, 2007, the  
12 company had securities valued at \$12.8 million," and  
13 you would agree that that should say "billion"?

14 A. Yes.

15 Q. "Held as collateral for the \$11.9 billion  
16 of rev repo and CP debt, which is collateralization  
17 of approximately 7 percent"; right?

18 A. Right.

19 Q. That means that the company had more  
20 collateral than its actual borrowings; right?

21 A. That's right.

22 Q. And that meant, if you just do the math  
23 there, the company had about \$900 million, almost a  
24 billion, of excess collateral, correct, on its  
25 reverse repurchase and commercial paper borrowings;

1 correct?

2 A. Correct.

3 Q. As of December 31, almost a billion dollars  
4 of excess collateral; right?

5 A. Right.

6 Q. Now let's go to the first sentence of the  
7 next paragraph. It says, "Subsequent to year end,  
8 the company raised capital of \$282 million in January  
9 of 2008 through a common stock offering, a preferred  
10 stock offering, and their dividend reinvestment stock  
11 purchase plan"; right?

12 A. Correct.

13 Q. And the company's ability to continue to  
14 raise capital even during this period of time was an  
15 additional source of comfort in reaching a going  
16 concern conclusion; right?

17 A. Correct.

18 Q. Now, let's go to the sentence that says,  
19 "Engagement team." I'm sorry, the third full  
20 paragraph. It says, "The engagement team reviewed  
21 the daily cash settlements with rev repo and CP  
22 counterparties, noting that Thornburg has met all  
23 margin calls required by lenders subsequent to August  
24 of 2007." Do you see that?

25 A. Yes.

1 Q. And that is a fairly absolute statement,  
2 would you agree?

3 A. It's an incorrect statement.

4 Q. And you testified yesterday that you meant  
5 to take that sentence out, but you just didn't get  
6 around to it? You forgot?

7 A. I forgot. I forgot to.

8 Q. So you didn't actually do this --

9 A. I did not.

10 Q. -- even though it's in the final memo;  
11 right?

12 A. That's correct.

13 Q. The final memo that you approved and that  
14 was initialed by Ms. Reinhart on three different  
15 dates; right?

16 A. That's correct.

17 Q. It was a memo that the engagement partner  
18 herself reviewed, and it included an important  
19 sentence about work that supposedly was done to test  
20 whether margin calls had been met. And your  
21 testimony today is you didn't actually do it and you  
22 just forgot to take it out?

23 A. That's correct.

24 Q. Now, when you testified before the SEC  
25 during the investigation of this matter in 2009, you

1 testified for two full days; right?

2 A. That sounds right.

3 Q. And you did not tell the SEC that you  
4 didn't actually do that, do those testings, and that  
5 you forgot to take that sentence out. You didn't  
6 tell the SEC that, did you?

7 A. I don't know if it was discussed or not.  
8 If we talked about it at all, I would have said that.

9 Q. But you didn't, did you?

10 A. I don't know if I did or not.

11 Q. Well, would it help refresh your memory if  
12 I were to show you a transcript of your two days of  
13 testimony and you can review it to see if you think  
14 you told the SEC about it?

15 A. No, if you say it's not in there, then I'll  
16 take your word for it.

17 Q. And you also had your deposition taken in  
18 this case; right?

19 A. Correct.

20 Q. And for two full days you were deposed in  
21 this case; right?

22 A. Correct.

23 Q. And that was in 2012; right?

24 A. Correct.

25 Q. And you still didn't tell anybody, either

1 us or the SEC, that you didn't actually do that  
2 procedure and you forgot to take that sentence out;  
3 right?

4 A. It's a deposition, so I'm asked specific  
5 questions and I respond to them. So if I was asked,  
6 I would have. If I was not asked, I wouldn't have.

7 Q. You were asked questions by the SEC in your  
8 deposition; right?

9 A. Yes.

10 Q. You didn't think it was important to tell  
11 the SEC that, Hey, by the way, this memo, this going  
12 concern memo that you intend to use as evidence  
13 against Mr. Goldstone and Mr. Simmons might be  
14 inaccurate and that a critical sentence in there was  
15 in error and you just left it out? That wasn't  
16 important for you to tell the SEC?

17 A. If they asked me questions about it, I  
18 would.

19 Q. When did you tell the SEC that that  
20 sentence was a mistake and you just forgot to take it  
21 out?

22 A. I don't know.

23 Q. Did you ever tell the SEC that?

24 A. I believe so, yes.

25 Q. You have no recollection of when?



1 A. No.

2 Q. Well, you recall Mr. McKenna asked you  
3 specifically about that sentence, right, and asked  
4 when you had done that?

5 A. Correct.

6 Q. Does that refresh your memory that perhaps  
7 you told the SEC just recently that you just forgot  
8 to take out that sentence?

9 A. I don't know if it was recently or if it  
10 was discussed previously.

11 Q. But it was not in 2009, a year after the  
12 events; and it was not in 2012, four years after the  
13 events. The first time you've ever told us, counsel  
14 for Mr. Goldstone and Mr. Simmons, who are attempting  
15 to get our clients a fair trial -- the first time you  
16 ever told us was eight years after the fact; isn't  
17 that right?

18 A. If it's not in the deposition and  
19 testimony, then that may be accurate.

20 Q. You see there is a sentence there called --  
21 or a heading called "Stress testing"?

22 A. Yes.

23 Q. I'd like to turn to Exhibit GX. Okay. So  
24 let's look at the bottom of the bottom email. The  
25 bottom email is from Mr. McLamb to you transmitting

1 the Thornburg going concern memo; right?

2 A. Correct.

3 Q. And he says, "Send whatever you can as soon  
4 as you can. I do not mind looking at drafts. The  
5 key is that our documentation must detail the stress  
6 testing we performed on their projections"; right?

7 A. Correct.

8 Q. "We also need to follow the guidance of PPL  
9 08-01"; right?

10 A. Correct.

11 Q. So you respond to him, to the above email.  
12 You respond to him a couple days later and you say,  
13 "Thornburg's revised going concern analysis and our  
14 audit memo is attached for your review." And then  
15 you add in the next paragraph, you say, "I added a  
16 stress test section in an effort to respond to  
17 McLamb's comment below regarding stress testing.  
18 Thornburg's situation is not really reliant on  
19 projections." There's that disclaimer about  
20 projections again. "So I attempted to lay out three  
21 scenarios: Probable, worst case, and complete  
22 devastation."

23 So you were attempting to test whether  
24 Thornburg could continue as a going concern with  
25 different variables or under different scenarios:

1 Probable, a probable scenario; a worst-case scenario,  
2 and a complete-devastation scenario; correct?

3 A. I think I did a base case, a worst case,  
4 and an even worse case.

5 Q. And when you were describing it to three  
6 partners at KPMG, you at least colloquially described  
7 that as probable, worst case, and complete  
8 devastation; right?

9 A. Correct.

10 THE COURT: Mr. Lee, would this be a good  
11 point for us to take our morning break?

12 MR. LEE: Sure, Your Honor.

13 THE COURT: All right. Let's be in recess  
14 for about 15 minutes. All rise.

15 (The jury left the courtroom.)

16 THE COURT: All right. Anything we need to  
17 discuss? Mr. McKenna? Mr. Lee?

18 MR. LEE: No, Your Honor.

19 THE COURT: All right. We'll be in recess.

20 (The Court stood in recess.)

21 (The jury entered the courtroom.)

22 THE COURT: All right, Ms. Hall. I'll  
23 remind you that you're still under oath.

24 Mr. Lee, if you wish to continue your  
25 cross-examination of Ms. Hall, you may do so at this

1 time.

2 MR. LEE: Thank you, Your Honor.

3 THE COURT: Mr. Lee.

4 Q. (By Mr. Lee) Ms. Hall, before we broke, we  
5 were talking about the stress testing that Mr. McLamb  
6 asked you to do. Do you recall that?

7 A. Yes.

8 Q. And you reported back to him that you had  
9 done stress testing, and you characterized the  
10 scenarios that you ran as probable, worst case, and  
11 complete devastation; correct?

12 A. Correct.

13 Q. Now, I'd like to turn back to Exhibit AS to  
14 see the actual results of your stress testing. And  
15 so what you called probable is the base scenario;  
16 correct?

17 A. Right. In my final documented memo, I did  
18 a base scenario.

19 Q. And that corresponds with what you were  
20 colloquially calling the probable scenario; right?

21 A. I'm not sure I really thought of this as  
22 being probable.

23 Q. Well, you used the word "probable" in your  
24 email to three partners at KPMG, did you not?

25 A. I did.

1 Q. Okay. So whether it's the base scenario or  
2 the probable scenario, you considered a variety of  
3 variables here in which the end result was, you  
4 concluded under all of these facts and circumstances  
5 the company could continue as a going concern; right?

6 A. I'm sorry. Could you say that again?

7 Q. Whether you called it the probable scenario  
8 or the base scenario, this sets forth the  
9 considerations, your assumptions, based on which you  
10 concluded that the company could continue as a going  
11 concern; right?

12 A. Correct.

13 Q. All right. So now let's go to scenario 1.  
14 Scenario 1 is the worst-case scenario; correct? In  
15 other words, it corresponds to what you called the  
16 worst-case scenario to three partners at KPMG; right?

17 A. Right.

18 Q. And in this, the first sentence says,  
19 "Despite management's position that a scenario more  
20 severe than the above is remote, we further  
21 considered a scenario where reverse repurchase  
22 lenders are unwilling or unable to provide financing  
23 to the company. The company would be forced to sell  
24 or liquidate assets to satisfy lenders, similar to  
25 the situation in August of 2007, and realize the

1 balance of the unrealized loss on securities of  
2 approximately \$414 million"; correct?

3 A. Correct.

4 Q. And that refers to -- the last phrase,  
5 "realize the balance of the unrealized loss"  
6 essentially refers to actually taking the OTTI into  
7 income; right?

8 A. Correct.

9 Q. As a loss.

10 A. Correct.

11 Q. And the bottom of that paragraph says, "The  
12 net inflow of cash could sustain the operations of  
13 the company for multiple years. Operations would  
14 continue to be profitable, excluding the recognition  
15 of the unrealized loss on the sale of assets, because  
16 the company could continue to earn a margin on its  
17 retained interest in the TMV securities, and so on."  
18 Do you see that?

19 A. Correct.

20 Q. So even under this worst-case scenario, you  
21 concluded that the company could continue as a going  
22 concern; right?

23 A. That was my understanding at the time.

24 Q. Now and if we can go back up to the prior  
25 paragraph, the base scenario, the top of the page, do

1     you see, "It is management's position that the  
2     likelihood that collateral values decrease by more  
3     than another 2 to 3 percent is remote." Do you see  
4     that?

5           A.     Yes.

6           Q.     And the SEC asked you about that sentence  
7     and about that representation yesterday; right?

8           A.     Correct.

9           Q.     And they tried to suggest that that was  
10    somehow misleading; right?

11          A.     I don't recall the context of the  
12    discussion, but I think the point was that I was  
13    relying on that assertion.

14          Q.     Right. But now if we go back down, that's  
15    under the base scenario; right?

16          A.     Right.

17          Q.     And if we go to the worst-case scenario,  
18    you concluded that even under a worst-case scenario,  
19    a scenario more severe than the above, they could  
20    still continue as a going concern; correct?

21          A.     Correct.

22          Q.     So that sentence, "It is management's  
23    position that the likelihood that collateral value  
24    decreased by more than another 2 to 3 percent," you  
25    actually were relying on that; right? Because you

1 concluded that even if it was worse than that, the  
2 company could still continue as a going concern,  
3 didn't you?

4 A. I was relying on that and considering the  
5 likelihood of the changes in the future, certainly  
6 relevant to the intent and ability to hold.

7 Q. But it would have made no difference  
8 whatsoever to your going concern conclusion, because  
9 even under a worst-case scenario, they still would  
10 have continued as a going concern; correct?

11 A. I think if their view was it could be a  
12 much more significant change, we would have looked  
13 more into the impact of that.

14 Q. Well, you did look much more into the  
15 impact. You ran a worst-case scenario, which is a  
16 more severe circumstance; right? So the notion that  
17 that one sentence, "It is management's position that  
18 the likelihood that collateral values decrease by  
19 more than another 2 to 3 percent is remote" -- the  
20 notion that, sitting here today, eight years after  
21 the fact, that that was somehow important -- that is  
22 totally contradicted by your analysis at the time  
23 showing that that sentence didn't matter at all.

24 A. That's not correct. If management had a  
25 different view that there was going to be a



1 significant change in the values, we would want them  
2 to include that in their assessment and evaluate what  
3 that impact would have been on their business and  
4 their liquidity.

5 Q. And you already conceded this morning,  
6 though, right at the beginning of the day, you  
7 already conceded that you have no evidence that  
8 management didn't actually believe that, do you?

9 A. I believe we believed it at the time it was  
10 said.

11 Q. Okay. So now let's go to the complete-  
12 devastation scenario. This is scenario 2. And this  
13 corresponds to what you called to three KPMG partners  
14 the complete-devastation scenario; correct?

15 A. Right.

16 Q. And under this scenario, the company, you  
17 write, would be forced to sell securities, no net  
18 cash inflow from the sales, repo and warehouse  
19 lenders do not waive resulting covenant violations  
20 and stop lending. That was the complete-devastation  
21 scenario; right?

22 A. Correct.

23 Q. And you write, "Despite the positive  
24 outlook in scenario 1, we further stress-tested the  
25 circumstance by looking at a severely extreme

1 scenario, scenario 2, in which the company would be  
2 forced to sell or liquidate assets to satisfy lenders  
3 at zero net cash inflow, and the warehouse line  
4 lenders refuse to grant waivers for the resulting net  
5 operating loss."

6 It goes on to say, "The company would not  
7 be able to originate additional loans, and the  
8 operating structure would need immediate cutbacks to  
9 a core group of individuals that could keep track of  
10 the flow of funds to keep the company alive"; right?  
11 That is the complete-devastation scenario you  
12 contemplated; correct?

13 A. Correct.

14 Q. And even under that scenario, you concluded  
15 that the company could continue as a going concern;  
16 right?

17 A. Right. This scenario did not incorporate  
18 that the repo collateral wouldn't be enough to repay  
19 the repo, so this assumes a net wash on the  
20 repurchase repo, and then the company would survive  
21 on its existing operations. So it doesn't include a  
22 situation where the values decrease so much that  
23 there wasn't enough cash and liquidity to pay that  
24 debt. Right? It assumed that the values decreased  
25 to a certain point to where, you know, the collateral

1 would be turned over to the counterparty. It doesn't  
2 reflect a shortfall that the counterparty could then  
3 come after the company for, basically the recourse on  
4 the debt.

5 Q. And you reference here the fact that the  
6 company -- as one of your assumptions, the company  
7 would not be able to originate additional loans;  
8 right?

9 A. Correct.

10 Q. Yesterday, when the SEC asked you some  
11 questions, you said, Well, you wished you had known  
12 the company had stopped for a period of time  
13 originating additional loans; right?

14 A. Correct.

15 Q. And even under your complete-devastation  
16 scenario, that didn't even matter; right? You  
17 concluded that the company could still continue as a  
18 going concern?

19 A. Under this extremely unlikely scenario.

20 Q. Right. So when you tried to suggest  
21 yesterday to the jury that that piece of information  
22 would have mattered to you, in fact, it wouldn't have  
23 mattered. You're only testifying that way now today,  
24 eight years after the fact; right?

25 A. It's information that we should have been

1 told of in order to include it in our assessment, and  
2 for management to include in theirs, as well.

3 Q. And you did contemplate that outcome;  
4 right? And at the time, eight years ago, before you  
5 were sitting here today in court, having been  
6 protected from a prosecution by the SEC, eight years  
7 ago you concluded it wouldn't have mattered.

8 A. I wouldn't characterize it as being  
9 protected. And this scenario was an extremely  
10 unlikely scenario that we evaluated.

11 Q. And even under that extremely unlikely  
12 scenario, you concluded the company had the ability  
13 to continue as a going concern; right?

14 A. Correct.

15 Q. You were asked some questions yesterday.  
16 We can take that down now. You were asked some  
17 questions yesterday about the sale of a particular  
18 type of security, which we won't get into the  
19 details, but called an interest-only security; right?

20 A. Right.

21 Q. And you know that that -- for purposes of  
22 accounting, the -- what you colloquially called a  
23 sale is actually a financing; right? And it was  
24 treated as a financing?

25 A. For accounting, it's accounted for as a

1       secured borrowing.

2           Q.     Right.  So for accounting, even though it's  
3       generally referred to as a sale of an asset, for  
4       accounting purposes it's actually a financing; right?

5           A.     That's correct.

6           Q.     And you testified that management told you  
7       that they believed these interest-only instruments  
8       could be sold at a premium, and that they perceived  
9       an opportunity to sell them for -- you know, at a  
10      good price essentially, and that the transactions  
11      were for reasons other than immediate liquidity  
12      needs; right?

13          A.     Correct.

14          Q.     Do you recall making that statement?

15          A.     Yes.

16          Q.     And you were told that by Mr. Feldman and  
17      Mr. Fellers; right?

18          A.     Correct.

19          Q.     You were not told that by Mr. Simmons;  
20      right?

21          A.     I don't have a specific recollection of  
22      that, no.

23          Q.     And you were not told that by Mr.  
24      Goldstone; right?

25          A.     Correct.

1 Q. And you were not told that by Ms. Starrett;  
2 right?

3 A. Correct.

4 Q. It was two other individuals, Mr. Feldman  
5 and Mr. Fellers; right?

6 A. Correct.

7 Q. And when the SEC tried to lump in everybody  
8 and just said management told you that, you didn't  
9 clarify that that was management, not including my  
10 clients in this case, did you?

11 A. I don't recall the specifics of the  
12 question and answering.

13 Q. But you understand that the term  
14 "management" could include any number of people;  
15 right?

16 A. Yes.

17 Q. And for purposes of this trial, you  
18 understand that it's important to distinguish who  
19 actually made what statements; right?

20 A. Yes.

21 Q. You can't just say management and hope that  
22 everybody assumes that it includes my clients, can  
23 you?

24 A. No.

25 Q. That wouldn't be fair; right?

1 A. Correct.

2 Q. All right. And so these statements that  
3 the SEC elicited from you and just attributed to  
4 management were, in fact, not made by my clients;  
5 right?

6 A. Not to me, not that I can recall to me.

7 Q. Now, let's turn to the list of margin calls  
8 that you requested. You requested a list of margin  
9 calls after becoming aware that the company was  
10 receiving a heightened level of margin calls and had  
11 low liquidity; correct?

12 A. Correct.

13 Q. And that was in about the third week of  
14 February; right?

15 A. Correct.

16 Q. And you wanted to better understand the  
17 margin call activity; right?

18 A. Correct.

19 Q. And Mr. Fellers told you that the capital  
20 markets group didn't have the particular list that  
21 you were looking for, and so you got it from -- or  
22 somebody from KPMG got it from the accounting  
23 department; right?

24 A. So I made the request the third week of  
25 February, and there was ongoing discussions with

1 management. We talked about the decline in the  
2 values, the margin calls, and the need to disclose  
3 that in the footnotes. At that point, we requested  
4 support for the footnote, and then management  
5 provided a list for those margin calls that were in  
6 the footnote.

7 Q. And this is in reference now to -- let's  
8 just go to Exhibit DL. The SEC showed you this. You  
9 recognize this document; right?

10 A. Yes.

11 Q. This is what has been referred to as the  
12 tie-out version of the Form 10-K?

13 A. Correct.

14 Q. And let's go to the page with the Bates  
15 number 52C. And would you agree that this is one of  
16 three schedules that was provided by the company to  
17 KPMG in response to your request for a list of margin  
18 call activity; right?

19 A. This was one of three schedules that was  
20 provided to us in response or request for support for  
21 the footnote disclosure.

22 Q. And you don't know specifically to whom at  
23 KPMG it was provided; right?

24 A. I believe it was to one of our staff. I  
25 don't remember which one.



1 Q. When you say staff, that could be anybody;  
2 right?

3 A. Seniors or associates.

4 Q. But you don't know specifically when it was  
5 provided; right?

6 A. It was one of the last things we received  
7 before issuing.

8 Q. And you don't know specifically. Well, let  
9 me -- your recollection is that it was provided to a  
10 staff member?

11 A. I believe it was, yes.

12 Q. And not you?

13 A. Correct.

14 Q. And not Ms. Baucom?

15 A. Correct.

16 Q. Not Ms. Reinhart?

17 A. Correct.

18 Q. How about Mr. Plummer?

19 A. It may have been.

20 Q. But you have some recollection that it was  
21 not certain people; correct?

22 A. I'm sorry?

23 Q. In other words, you now recall, eight years  
24 later, that it was not provided to you; right?

25 A. It was not provided to me; that's correct.

1 Q. And you now recall, eight years later, that  
2 it was not provided to Ms. Baucom; right?

3 A. I don't believe it was, but I don't know  
4 who it was provided to.

5 Q. You don't know, one way or the other?

6 A. I don't.

7 Q. It could have been provided to Ms. Baucom.

8 A. I don't believe it was, but we'd have to  
9 ask Ms. Baucom.

10 Q. Well, you recall your deposition testimony  
11 in this case; correct?

12 A. Correct.

13 MR. LEE: I'd like, with the Court's  
14 permission, to play the excerpt of Ms. Hall's  
15 deposition, page 36, line 22, through page 37, line  
16 16.

17 THE COURT: You may.

18 (Video played.)

19 Q. (By Mr. Lee) Ms. Hall, during your  
20 deposition, were you asked those questions and did  
21 you give those answers?

22 A. Yes.

23 Q. Now, in any event, we've established when  
24 you testified to Mr. McKenna that it was provided  
25 only to a staff member, that wasn't accurate, was it?

1 A. I believe it was, but I don't know.

2 Q. And you didn't point out, when you were  
3 asked that question, to whom it was provided, you  
4 didn't point out that, A, you're not sure to whom it  
5 was provided; and B, you testified four years ago  
6 that you didn't know, did you? You didn't point that  
7 out, did you?

8 A. I testified that I believe it was, but I  
9 don't know.

10 Q. Now, in any event, you reviewed at least --  
11 let's go back to 52C. You reviewed that page that's  
12 on the screen; right?

13 A. I saw this schedule. I didn't review  
14 through it in detail.

15 Q. Okay. But you saw it; right?

16 A. Yes.

17 Q. And it didn't seem inconsistent with  
18 anything you had already known; correct?

19 A. It showed that they had received margin  
20 calls in excess of 300, so we considered that as  
21 support for the footnote.

22 Q. My question was: It didn't seem  
23 inconsistent with anything you had already known;  
24 correct?

25 A. Right.

1 Q. And it didn't seem inconsistent with  
2 anything you had already learned about during the  
3 audit; correct?

4 A. I knew that they had received these margin  
5 calls. We had talked about them. So to that extent,  
6 it was not inconsistent.

7 Q. And it didn't seem inconsistent with  
8 anything you had already discussed with management;  
9 correct?

10 A. To the extent I used it, was that it had  
11 the roughly \$300 million in margin calls which was  
12 consistent with what I understood.

13 Q. And it didn't appear to be inconsistent  
14 with anything else that you were aware of; correct?

15 A. Not that I identified; that's correct.

16 Q. And no one from KPMG followed up with  
17 anyone at Thornburg to ask for an explanation of any  
18 of the information on this schedule; correct?

19 A. Not that I know of.

20 Q. And in fact, when I say "on this schedule,"  
21 if we can just quickly show pages 53 and 54, there  
22 were three pages, right, of this what we're calling  
23 margin call schedules?

24 A. Yes.

25 Q. And no one from KPMG followed up with

1 anyone at Thornburg to ask for an explanation of any  
2 of the information contained on any of these three  
3 pages; correct?

4 A. Not that I know of; that's correct.

5 Q. And you personally did not follow up with  
6 anyone at Thornburg to ask for an explanation of any  
7 of the information contained on these schedules;  
8 correct?

9 A. Correct.

10 Q. And you said that you used this for support  
11 of the footnote disclosure showing that the company  
12 had received and met over \$300 million of margin  
13 calls in the last two weeks of February; correct?

14 A. Correct.

15 Q. But in fact, you also considered the  
16 information in this margin call schedule in your OTTI  
17 analysis; correct?

18 A. To the extent of having disclosures about  
19 the liquidity risk, that's correct.

20 Q. And when it was provided to you, no one  
21 told you to only look at it for a particular purpose;  
22 right?

23 A. Correct.

24 Q. And there was nothing stopping you from  
25 doing any further testwork on this schedule; correct?

1 A. Correct.

2 Q. There was nothing stopping you from doing  
3 further follow-up on this schedule; correct?

4 A. Correct.

5 Q. There is nothing stopping you from asking  
6 more questions about the information on this  
7 schedule; correct?

8 A. Correct.

9 Q. And you believe that Ms. Reinhart would  
10 have taken these schedules into account in her OTTI  
11 analysis; correct?

12 A. It was considered as part of the  
13 information for the disclosure of the margin calls,  
14 and she would have considered it to that extent, as  
15 well.

16 Q. But my specific question is: You believe  
17 Ms. Reinhart would have taken these margin call  
18 schedules into account in her OTTI analysis; correct?

19 A. To the extent it was supporting a footnote  
20 disclosure for the liquidity risk.

21 Q. Again, that's not my question. My question  
22 is: You believe Ms. Reinhart would have taken these  
23 schedules into account in her OTTI analysis. I'm not  
24 talking about the footnote disclosures. I'm talking  
25 about her OTTI analysis. You believe Ms. Reinhart

1 would have taken these schedules into account in her  
2 OTTI analysis; correct?

3 MR. McKENNA: Objection, asked and  
4 answered, and relevance, Your Honor.

5 THE COURT: Overruled.

6 A. We received the schedule, and we requested  
7 support for the footnote disclosures, and in response  
8 we were provided this schedule, and we considered it  
9 to the extent that it supported the footnote  
10 disclosure.

11 MR. LEE: Your Honor, with the Court's  
12 permission, I'd like to play another portion from Ms.  
13 Hall's deposition transcript, page 50, lines 7  
14 through 13.

15 THE COURT: You may.

16 (Video played.)

17 Q. (By Mr. Lee) And just to make clear,  
18 because you keep trying to refer to the footnote  
19 disclosure, you considered the information in this  
20 margin call schedule in your OTTI analysis; correct?

21 A. We considered it, and used it for purposes  
22 of supporting the footnote disclosure.

23 MR. LEE: Your Honor, with the Court's  
24 permission, I'd like to play another excerpt from Ms.  
25 Hall's deposition, page 49, lines 21 through 24.

1 THE COURT: You may.

2 (Video played.)

3 Q. (By Mr. Lee) You also considered the  
4 information in this schedule in your going concern  
5 analysis; correct?

6 A. Correct.

7 Q. And you believe Ms. Reinhart would have  
8 taken that information into account in her going  
9 concern analysis; correct?

10 A. Correct.

11 Q. After taking into account the information  
12 contained in the schedule, you concluded that the  
13 company did not need to take an OTTI; correct?

14 A. Correct.

15 Q. And after taking into account the  
16 information on this schedule, you concluded that the  
17 company was a going concern; correct?

18 A. Correct.

19 Q. Let's go back and look at a few of the  
20 entries. I won't belabor this because we've gone  
21 through this with the jury before, but I do think  
22 it's important to point out. So this is one of the  
23 pages, one of the three pages of the schedule; right?

24 A. Correct.

25 Q. And if we can go to the -- there is an



1 entry, about a third of the way down, for Greenwich,  
2 \$42 million. Do you see that?

3 A. Yes.

4 Q. That shows a margin call from Greenwich on  
5 February 21 in the amount of \$42 million; correct?

6 A. Correct.

7 Q. And if we go down to the line for CSFB for  
8 59, that shows the margin call from CSFB on February  
9 15 for \$50 million; correct?

10 A. Correct.

11 Q. And this -- some of the entries below that  
12 on February 25, it says, "Asset sale, CSFB, \$30  
13 million. Asset sale, CSFB \$10 million. Do you see  
14 that?

15 A. Yes.

16 Q. Those are in reference to those particular  
17 financing transactions, the interest-only  
18 transactions we talked about a little bit ago; right?

19 A. I can't tell you for sure, but that sounds  
20 reasonable.

21 Q. And then below that is a reference to the  
22 Citibank call of \$196 million on February 21. Do you  
23 see that?

24 A. Yes.

25 Q. Then it shows, below that, three payments

1 on that Citi call of \$10 million and \$40 million and  
2 \$20 million; correct?

3 A. Correct.

4 Q. By the way, when -- just as a matter of  
5 timing, when you were asked during the SEC's  
6 examination about the timing of the payment of  
7 particular margin calls, you included weekends;  
8 correct?

9 A. I wasn't thinking about weekends.

10 Q. And margin calls are not paid on weekends;  
11 right?

12 A. I wouldn't believe so.

13 Q. And so you're aware that the period during  
14 which the company was paying the Citibank margin call  
15 included a weekend. So February 23 and 24 was a  
16 weekend. Do you recall that?

17 A. I'll take your word for it.

18 Q. And the prior week, when you were asked  
19 questions about how long it took to pay the CSFB  
20 call, in fact, February 16th, 17th and 18th were a  
21 weekend, because the 16th and the 17th were Saturday  
22 and Sunday, and the 18th was Presidents' Day, so that  
23 was a long weekend; correct?

24 A. I'll take your word for it.

25 Q. And so when you testified about the length

1 of time it took the company to pay some of these  
2 margin calls, it actually was inflated because it  
3 didn't take into account the fact that there were  
4 intervening weekends and, in one case, a long  
5 weekend; right?

6 A. Can you repeat? I think the question was:  
7 When are they due. And I was -- that day or the next  
8 day.

9 Q. Okay. So you would agree with me, though,  
10 that if you were attempting to characterize how long  
11 it took to pay off a margin call, it would be  
12 inaccurate to just lump in the weekends; correct?

13 A. I see. I believe so, yes.

14 Q. And now if we can go to the next page of  
15 the schedule. We've looked at this before, as well.  
16 This is -- at the top it says, "Source call log from  
17 Tim Sturdy." Do you see that?

18 A. Yes.

19 Q. Call amount, the amount of the call, and  
20 how settled, meaning how it was paid or resolved;  
21 right?

22 A. Correct.

23 Q. And this schedule also -- let's just go  
24 down to the Citigroup call, because you testified you  
25 weren't aware. You testified yesterday, in fact,

1 that you weren't aware of the Citigroup call at all.

2 A. That's correct.

3 Q. Even though it's on the schedules that you  
4 reviewed for the purposes of your OTTI and going  
5 concern analysis; right?

6 A. I saw the schedule. I didn't go through it  
7 in detail.

8 Q. And this shows that the company received a  
9 margin call from Citi?

10 A. Sorry, I'll correct. I saw the first page.  
11 I did not go through in detail.

12 Q. And the first page also showed the  
13 Citigroup margin call; right?

14 A. Yes.

15 Q. And you went through it in enough detail to  
16 conclude on OTTI and going concerns; right?

17 A. I considered it for purposes of supporting  
18 the footnote. Showing that they had received \$300  
19 million in margin calls did not seem inconsistent  
20 with my understanding. So to the extent it was, I  
21 didn't believe it provided new information. That was  
22 the extent that I considered it.

23 Q. And for purposes of OTTI and going concern,  
24 two of the most critical issues in the audit, you  
25 considered that schedule. The record is what it is,

1 but you previously testified that you considered this  
2 information for your going concern and OTTI analysis,  
3 and you testified to that under oath four years ago;  
4 correct?

5 A. I used it for purposes of supporting the  
6 footnote disclosures which are relevant to the OTTI  
7 and going concern analysis.

8 Q. And this page shows that the Citibank call  
9 wasn't paid in a single day; correct?

10 A. Correct.

11 Q. You can tell from a quick look at this  
12 schedule that there were payments over the course of  
13 several days; right?

14 A. I believe so, yes.

15 Q. And this page and the last page shows the  
16 \$42 million margin call from Greenwich; right?

17 A. Correct.

18 Q. And you can tell from this schedule that  
19 the Greenwich call wasn't paid on time; right?

20 A. Correct.

21 Q. And when counsel asked you yesterday about  
22 whether you were aware of the Greenwich call, I think  
23 he asked you a couple of times and you said, "Not  
24 specifically." Do you recall that?

25 A. Yes.

1 Q. And that was a very careful choice of  
2 words, wasn't it?

3 A. Yeah. We knew that they were receiving  
4 margin calls, but they hadn't identified any specific  
5 margin call.

6 Q. And so with all of this information in  
7 hand, when KPMG issued its unqualified audit opinion,  
8 KPMG was aware that Thornburg had received  
9 approximately \$300 million in margin calls during the  
10 two weeks leading up to the Form 10-K; correct?

11 A. Yes.

12 Q. And with all of this information in front  
13 of you, KPMG was aware that the company was not able  
14 to pay all of those margin calls within a single day;  
15 correct?

16 A. No, I don't believe we were of that  
17 knowledge, no.

18 Q. Now, you testified multiple times that you  
19 used the schedule for purposes of auditing the  
20 footnote, subsequent event footnote?

21 A. For supporting that disclosure, yes.

22 Q. And for auditing, right, because we  
23 established before that the subsequent event footnote  
24 is included in your audit opinion; right?

25 A. That's correct.

1 Q. And that means that that footnote includes  
2 the statement that the company has received and met  
3 approximately \$300 million in margin calls; correct?

4 A. Correct.

5 Q. And that was something you had to audit;  
6 correct?

7 A. Correct.

8 Q. And these schedules clearly show that the  
9 \$300 million in margin calls had not been met at the  
10 time of the filing of the Form 10-K, at the time of  
11 these schedules; correct?

12 A. I'm sorry, can you repeat that?

13 Q. These schedules clearly show -- in other  
14 words, you just do the math and look at any one of  
15 these schedules, you can tell that as of the time  
16 these schedules were prepared, not all of the margin  
17 calls had been met in full; correct?

18 A. Correct.

19 Q. And in fact, you can tell just by looking  
20 at these schedules that the Citigroup margin call  
21 hadn't been paid in full at whatever time of day this  
22 scheduled had been prepared; correct?

23 A. Correct.

24 Q. And so had you been auditing the subsequent  
25 events footnote, you would have had to do additional

1 testwork in order to find support for the statement  
2 that the company has actually met \$300 million in  
3 margin calls in the last two weeks; correct? Because  
4 these schedules don't support that.

5 A. No, we relied on assertions from management  
6 for that.

7 Q. Now, this schedule is not the only thing  
8 you did to look at margin call activity; right?  
9 There were other audit procedures you followed to  
10 keep -- to review the company's records of margin  
11 calls paid and received; correct?

12 A. Not that I could think of.

13 Q. You reviewed Thornburg's general ledger?

14 A. We looked at aspects of the general ledger.

15 Q. And the general ledger is an accounting  
16 document that keeps track of all of the company's  
17 transactions; right? All of their financial  
18 transactions.

19 A. Their account balances, and then in the  
20 system would be detail.

21 Q. And so the general ledger would reflect  
22 payments on margin calls; correct?

23 A. The transactions -- they would be entered  
24 as transactions in the general ledger for their cash  
25 transactions; that's correct.



1 Q. And you also reviewed wire transfer records  
2 from the company; correct?

3 A. For wires during the fiscal year or for  
4 payment subsequently, that's correct.

5 Q. And you reviewed some wire transfer records  
6 during the subsequent events period; correct?

7 A. Correct. KPMG would have, not me  
8 personally.

9 Q. Members of the audit team, engagement team,  
10 reviewed wire transfer records during the subsequent  
11 events period; correct?

12 A. I believe so.

13 Q. And you're aware that the payment of margin  
14 calls, at least some of them, occur by wire transfer;  
15 correct?

16 A. Correct.

17 Q. And KPMG also reviewed some email or  
18 essentially they're called Bloomberg messages, but  
19 they're a form of text message with repo  
20 counterparties; correct?

21 A. I'm not specifically aware of that during  
22 the audit period. It's possible.

23 Q. And you talked to people in the capital  
24 markets department about the company's margin call  
25 activity; right?

1 A. Correct.

2 Q. Talked to Nate Fellers?

3 A. Correct.

4 Q. Talked to Patrick Feldman?

5 A. Yes.

6 Q. Talked to Xen Stanhope?

7 A. Yes.

8 Q. They were all independent sources of  
9 information about the company's margin call activity;  
10 correct?

11 A. Correct.

12 Q. And the company had a bank account  
13 called -- which was known by the acronym of the CTC  
14 account; right?

15 A. I believe so, yes.

16 Q. And that was essentially the company's  
17 checking account; right?

18 A. It was one of their cash accounts.

19 Q. And you reviewed those records, too; right?

20 A. Not me personally, but our team would look  
21 at some of them.

22 Q. Okay. And those records, the CTC reports,  
23 would also reflect payments by the company of margin  
24 calls; correct?

25 A. I believe so, yes.

1 Q. I'm going to ask you some questions about  
2 the events after the file of the Form 10-K. You  
3 testified that shortly after the Form 10-K was filed,  
4 you were notified by Ms. Starrett that the company  
5 had received a large volume of additional margin  
6 calls, and that the company had received a default  
7 notice; correct?

8 A. Correct.

9 Q. And that was over the weekend following the  
10 filing of the form 10-K?

11 A. Correct.

12 Q. And you testified that you made a request  
13 to the company for information that would support the  
14 position that the margin calls the company had  
15 received on February 28th and 29th were  
16 unforeseeable?

17 A. Correct.

18 Q. And you sent that request to the company on  
19 March 4; correct? Or it was actually late at night  
20 on March 3. Do you recall that?

21 A. That sounds reasonable.

22 Q. And specifically you sent a request to Mr.  
23 Goldstone, Ms. Starrett, Mr. Simmons, and Mr. Buniel  
24 at 12:44 in the morning on Tuesday, March 4.  
25 Actually, let's take a look at Exhibit DI. So the

1 bottom email is from you to the folks I just  
2 mentioned at 12:44 a.m. It says, "Please give us a  
3 call in the morning. We will walk you through the  
4 attached." Do you see that?

5 A. Yes.

6 Q. And if we can just quickly look at the  
7 attached, these are the series -- we'll come back to  
8 this. But these are the series of requests that you  
9 wanted the company to address; right?

10 A. Yes.

11 Q. Now, if we can go back to the cover email.  
12 And early the next morning, a few hours later, at  
13 5:22 a.m., Ms. Starrett forwards it on to Mr.  
14 Fellers, Mr. Feldman, and Mr. Stanhope and says,  
15 "Please read the attached and let me know what you  
16 believe we can get as far as their request for  
17 documentation." Right?

18 A. Yes.

19 Q. And so she was asking members of the  
20 capital markets group to handle that request, at  
21 least in the first instance; right?

22 A. Yes.

23 Q. And the response that the company provided  
24 came in early afternoon the next day; right?

25 A. That sounds reasonable.

1 Q. At shortly before 2:00 Mountain Time the  
2 company sent you a response; right?

3 A. That sounds reasonable.

4 Q. And so less than -- about a half-day, not  
5 even a full business day later, the company pulled  
6 together a bunch of information in order to provide  
7 you an immediate response to the request; correct?

8 A. Correct.

9 Q. And at 2:00 that day, there was a meeting  
10 of the audit committee; right?

11 A. Yes.

12 Q. And if we can go to Exhibit DF. These are  
13 minutes of the audit committee meeting on March 4.  
14 Do you see that that starts at 2:00 p.m.?

15 A. Yes.

16 Q. And that started just about ten minutes  
17 after you received the company's response to the  
18 request that you sent at almost 1:00 a.m. for  
19 information about what had happened on February 28th  
20 and 29th; right?

21 A. Correct.

22 Q. And this was a telephonic call of the audit  
23 committee; right? And you can see you were not on --  
24 oh, yes, you were on this conference call; right?

25 A. Yes.

1 Q. And if we can go down to "KPMG withdrawal  
2 of the audit opinion," and in that meeting, KPMG  
3 informed the audit committee and management of its  
4 decision to withdraw its opinion on the company's  
5 financial statements, and that KPMG believed there  
6 was doubt as to whether the company could continue as  
7 a going concern; right?

8 A. Correct.

9 Q. And I think you testified a little about  
10 this meeting. This was a meeting where KPMG  
11 essentially presented its view that this was going to  
12 happen; right?

13 A. Correct.

14 Q. And do you recall the company, management  
15 of the company, disagreed with that position?

16 A. They were not happy with that agreement,  
17 yes.

18 Q. And they tried to persuade you that it was  
19 the wrong decision?

20 A. Yes.

21 Q. And members of the audit committee  
22 disagreed with that decision; right?

23 A. I don't have a specific recollection of  
24 their response.

25 Q. Members of the audit committee tried to

1 persuade you at least that it was the incorrect  
2 decision; right?

3 A. I don't have that specific recollection.

4 Q. And after that discussion of that audit  
5 committee meeting, KPMG did not say, "Well, we'll go  
6 back and think about it," did they?

7 A. No, we were concluded.

8 Q. Right. So let's go to the first paragraph  
9 of the next page. It says, "After a lengthy and  
10 detailed discussion, KPMG informed the audit  
11 committee and management that its decision to  
12 withdraw its audit opinion on the 2007 financial  
13 statements was final"; right?

14 A. Yes.

15 Q. And this was in a meeting that started ten  
16 minutes after you had received the packet of  
17 information from the company in response to your 1:00  
18 a.m. request; correct?

19 A. I'd have to look at the emails, but if  
20 that's -- I mean, it was certainly all happening very  
21 close together, and I was receiving information and  
22 talking to our partners real-time.

23 Q. And in fact, you didn't even have time to  
24 consider the company's response that was provided you  
25 ten minutes before that meeting started; you didn't

1 even have time to consider that, because KPMG had  
2 already made up its mind; right?

3 A. I had looked at the information. I had my  
4 computer up in Cynthia's office as we were having our  
5 conference calls. I was looking at the information  
6 real-time as it came through, talking with Cynthia  
7 about it and with our partners on the phone.

8 Q. But it couldn't have taken more than -- you  
9 wouldn't have spent more than ten minutes looking at  
10 it; right?

11 A. I looked at what it was. I don't know how  
12 much time I spent on it. But I even, during the  
13 meeting, could have been looking at it.

14 Q. And you later reported to another partner.  
15 Are you familiar with an individual named Jason  
16 Harris?

17 A. Yes.

18 Q. He's another partner at KPMG?

19 A. Yes.

20 Q. And you reported to him that Thornburg  
21 pulled all the data together, but it came in about  
22 ten minutes before a big conference call; right?

23 A. I don't have a specific recollection.

24 Q. Would it refresh your recollection to see a  
25 copy of that email?



1 A. Yes.

2 MR. LEE: Your Honor, may I approach?

3 THE COURT: You may.

4 Q. (By Mr. Lee) I'm handing you what's been  
5 marked as Exhibit PX, an email from you to Mr. Harris  
6 on Saturday, March 8. If you could just take a look  
7 and read through the email at the top.

8 A. Okay.

9 Q. Does that refresh your recollection that,  
10 in fact, the information that Thornburg put together  
11 came in about ten minutes before this conference  
12 call?

13 A. Yes.

14 Q. And does that reflect your recollection  
15 that at the time of the conference call, no one on  
16 the KPMG side had seen this information?

17 A. Correct. I'd not specifically seen the  
18 documents. I had not seen the documents themselves.  
19 I had seen the summary points, and then there was  
20 discussion about them.

21 Q. Now, let's take a look at Exhibit 284. You  
22 were shown this yesterday by the SEC; right?

23 A. Yes.

24 Q. And it had the -- it says PBC, prepared by  
25 client, and it has the names Kyle Rhoades and Clay

1 Simmons; correct?

2 A. Yes.

3 Q. Whose handwriting is that?

4 A. Cynthia Reinhart.

5 Q. Is that Kyle Rhoades' and Clay Simmons' --  
6 that's their handwriting?

7 A. Yes.

8 Q. You testified that Mr. Rhoades and Mr.  
9 Simmons wrote this document; right?

10 A. I believe it was provided by them. I don't  
11 know who specifically wrote it.

12 Q. Right. You don't actually know who wrote  
13 this document, do you?

14 A. No.

15 Q. I don't want to characterize your  
16 testimony, but if you testified yesterday that it was  
17 written by Mr. Rhoades and Mr. Simmons, that was not  
18 correct; fair to say?

19 A. Whether it was written by somebody else or  
20 not, it was provided by Clay.

21 Q. And you don't know -- you don't remember  
22 who actually provided this document to you, do you?

23 A. I'm going by the note that it was provided  
24 by Mr. Simmons.

25 Q. But you have no independent recollection of

1 Mr. Simmons providing it to you, do you?

2 A. Not specifically, no.

3 Q. So you're just assuming that it was  
4 provided by Mr. Simmons, even though it says, in  
5 somebody else's handwriting, Kyle Rhoades and Clay  
6 Simmons; right?

7 A. This was in response to our request that I  
8 know Clay and Jane were leading.

9 Q. But if you testified that this was either  
10 provided to you by Mr. Simmons or written by Mr.  
11 Simmons, that's just an assumption on your part;  
12 right?

13 A. Yes.

14 Q. And that's an assumption the SEC wanted you  
15 to make to support their case; right?

16 A. We requested it of Jane and Clay, and they  
17 provided it.

18 Q. In fact, this information was not provided  
19 by Mr. Simmons, was it?

20 A. I don't have a specific recollection.

21 Q. Would it refresh your memory to take a look  
22 at the email that was sent to you transmitting this  
23 information?

24 A. Okay.

25 MR. LEE: May I approach, Your Honor?

1 THE COURT: You may.

2 Q. (By Mr. Lee) Ms. Reinhart (sic), I've  
3 handed you a document marked as Exhibit PW. Do you  
4 see that?

5 A. Yes.

6 Q. If you take a look at the first email, do  
7 you see that?

8 A. Yes.

9 Q. And do you see -- does that refresh your  
10 recollection that this -- well, take a look at the  
11 attachments.

12 A. Okay.

13 Q. Does that refresh your recollection that  
14 this email was provided to you, this information was  
15 provided to you, by Ms. Starrett; right?

16 A. Yes, it was emailed to us by Ms. Starrett,  
17 but all of it is capital markets type information  
18 that would have come from capital markets, which  
19 reports to Clay.

20 Q. But it was not actually provided to you by  
21 Mr. Simmons, was it?

22 A. Not directly, no.

23 Q. And in fact, Mr. Simmons is not even copied  
24 on this email, is he?

25 A. No.

1 Q. And in fact, it was not provided to  
2 Ms. Starrett by Mr. Simmons, was it?

3 A. I don't know.

4 Q. Well, take a look at the next email. See  
5 if that refreshes you.

6 A. Okay.

7 Q. It was not provided to Ms. Starrett by Mr.  
8 Simmons, was it?

9 A. No.

10 Q. It was provided to Ms. Starrett by Mr.  
11 Rhoades; right?

12 A. Right.

13 Q. And Mr. Simmons isn't copied on that email  
14 either, is he?

15 A. No.

16 Q. And so insofar as the email traffic shows  
17 how this was actually provided to KPMG, it's sheer  
18 speculation that it was provided by Mr. Simmons,  
19 isn't it? Because there is nothing in the email  
20 traffic showing that it was provided by Mr. Simmons  
21 or even that he was copied on it, is there?

22 A. I know that Jane and Clay were leading the  
23 effort to pull this information together.

24 Q. But the actual provision of this  
25 information, Mr. Simmons isn't copied anywhere, is

1 he?

2 A. No.

3 Q. Mr. Goldstone isn't copied anywhere, is he?

4 A. No.

5 Q. And you would agree that the information  
6 that I just handed you in Exhibit PW is the same as  
7 the information in Plaintiff's Exhibit 284; right?  
8 They're the same packets?

9 A. I believe so, yes.

10 Q. And so when the SEC showed you only Exhibit  
11 284, and you speculated about this having been  
12 prepared and provided by Mr. Rhoades and Mr. Simmons,  
13 they didn't show you the underlying email traffic  
14 that showed that you that it was only provided by  
15 Ms. Starrett; that it was provided to Ms. Starrett by  
16 Mr. Rhoades, and that Mr. Simmons isn't even copied.  
17 They didn't show you all that, did they?

18 A. No.

19 Q. And they didn't show the jury all that, did  
20 they?

21 A. No.

22 Q. And you just willingly went along with the  
23 assumption that Mr. Simmons provided this to you,  
24 because that's what you thought the SEC wanted to  
25 hear; right?

1           A.    No, it's because my understanding is that  
2   Clay Simmons was leading this effort to pull this  
3   information together, and Kyle Rhoades is the person  
4   that would do this type of analysis.

5           Q.    But in terms of your own personal  
6   knowledge, you don't know where this information came  
7   from specifically, do you?

8           A.    Not specifically.

9           Q.    Let's take a look at Exhibit 285. Exhibit  
10   285 is a copy of the request that was made by KPMG to  
11   Thornburg that has somebody's handwritten notes on  
12   it; right?

13          A.    Yes.

14          Q.    Do you know whose handwritten notes these  
15   are on this document?

16          A.    Those are mine.

17          Q.    And the first sentence -- let's look at the  
18   first sentence at the top, or the second paragraph,  
19   sorry. "Considering the proximity of the events to  
20   the filing of the Form 10-K, there is a presumption  
21   that the company should have been aware or at least  
22   should have considered the potential that there was a  
23   reasonable chance that the company could have faced  
24   margin calls in excess of its ability to meet such  
25   calls." Do you see that?

1 A. Yes.

2 Q. That's a lot of "should haves"; right?  
3 Should have been aware, or should have considered;  
4 right?

5 A. Yes.

6 Q. That's a lot of disclaimers there that  
7 there was a reasonable chance that the company could  
8 have faced margin calls; right?

9 A. Right.

10 Q. So you were essentially there  
11 second-guessing what the company should have done or  
12 could have done; right?

13 A. Right.

14 Q. And the reference to "there was a  
15 presumption that the company should have done all of  
16 that" -- that's not actually a presumption grounded  
17 in any accounting principle, is it? That was just  
18 KPMG's presumption?

19 A. That's correct.

20 Q. And that was KPMG's presumption because as  
21 soon as the company notified KPMG of the events that  
22 had happened after the 10-K, KPMG decided that it  
23 wanted to withdraw its audit opinion; right?

24 A. Yes.

25 Q. Now, let's look at the next page, the



1 portion that says, "Day-by-day correspondence with  
2 counterparties during the week before filing."  
3 Counsel for the SEC asked you about this, right,  
4 yesterday?

5 A. Yes.

6 Q. And the specific request: "Correspondence  
7 with counterparties for the two weeks prior to  
8 filing, along with supporting evidence." And there  
9 is a note that says, "Not received." Do you see  
10 that?

11 A. Yes.

12 Q. And that's your handwriting?

13 A. Yes.

14 Q. And then there is another note that says,  
15 "Management indicated there was minimal  
16 correspondence." Do you see that?

17 A. Yes.

18 Q. And that suggests that you never did  
19 receive that minimal correspondence; right?

20 A. Correct.

21 Q. You didn't do anything to follow up on  
22 that, did you?

23 A. No. We felt we had what we needed.

24 Q. And you never followed up to get the  
25 minimal correspondence that there was. You simply

1 wrote, "Not received." But you never followed up to  
2 actually get it, did you?

3 A. No.

4 Q. And you never asked anyone on the  
5 engagement team to follow up, did you?

6 A. I don't believe so, no.

7 Q. And you never discussed with anyone on the  
8 engagement team the fact that this item hadn't yet  
9 been received; correct?

10 A. I'm sorry?

11 Q. You never actually discussed with anyone on  
12 the engagement team the fact that you hadn't yet  
13 received this correspondence; right?

14 A. I may have. I just don't recall.

15 Q. Yesterday counsel asked you about some  
16 emails relating to a rumor of a collapsing unnamed  
17 hedge fund in Europe; right?

18 A. Right.

19 Q. And rumors are not something that an  
20 auditor actually audits; right?

21 A. Right.

22 Q. You don't have a procedure for evaluating  
23 rumors?

24 A. We evaluate information.

25 Q. But something that's unconfirmed, that's a

1 rumor, you wouldn't, as a matter of practice,  
2 evaluate; correct?

3 A. Well, I would consider information, whether  
4 it was a rumor or not.

5 Q. There is no accounting guidance for how to  
6 evaluate rumors, is there?

7 A. Specifically, no.

8 Q. Now, let's look at the first of the emails  
9 that the SEC showed you. Let's look at Exhibit 113.  
10 Now, the bottom email is the one that the SEC focused  
11 on as transmitting this information. And Mr.  
12 Feldman -- if we can blow up the bottom -- it's from  
13 Mr. Feldman to Mr. Goldstone, Mr. Simmons, copying  
14 Nate Fellers; right?

15 A. Right.

16 Q. And he reports, "I spoke with Charles Mac  
17 and he made it sound like a large repo client,  
18 European, lots of pay option MTA was collapsing. He  
19 couldn't give me details other than they own billions  
20 that presumably would have to get sold. He may not  
21 be able to give more -- he may be able to give more  
22 details later today. He sounded very concerned about  
23 it. For the time being, we're not really supposed to  
24 know about this situation, but news may be coming  
25 soon."

1 Do you see that?

2 A. Yes.

3 Q. And the reference to the repo client,  
4 European, lots of pay option MTA -- do you know what  
5 pay option MTA is?

6 A. I don't recall what the MTA stands for.  
7 But pay option is a type of security where the  
8 underlying loans the borrowers have an option to pay.

9 Q. But you don't know what the MTA stands for?

10 A. Not offhand, no.

11 Q. So you don't know whether lots of pay  
12 option MTA is comparable at all to Thornburg, do you?

13 A. They do have a small amount of pay option  
14 ARM-type assets, but it's not a significant amount.

15 Q. Okay. So except for a small amount, this  
16 information alone does not suggest any comparability  
17 to Thornburg, does it, in terms of the type of  
18 securities at issue?

19 A. It's mortgage-related assets, which are  
20 relevant, just like the subprime assets became an  
21 issue even for high-quality assets.

22 Q. But the pay option tells you that it's  
23 different from Thornburg; correct?

24 A. Among the majority of the other assets,  
25 yes.

1 Q. And this doesn't identify the name of the  
2 repo client; right?

3 A. Right.

4 Q. It doesn't even identify the country in  
5 Europe where the repo client is located; right?

6 A. Right.

7 Q. And this was sent by Mr. Feldman; right?

8 A. Correct.

9 Q. And you've never talked to Mr. Feldman  
10 about what he meant when he sent this email, have  
11 you?

12 A. That's correct.

13 Q. You've never asked him what he thought of  
14 that information, have you?

15 A. That's correct.

16 Q. And you've never asked Mr. Feldman whether  
17 he thought this information would have any relevance  
18 to Thornburg, have you?

19 A. I have not.

20 Q. And when the SEC showed you this email in  
21 the investigation, you didn't say to the SEC, "You  
22 know, wait a second, I think we ought to hear from  
23 the author of the email, from Mr. Feldman." You  
24 didn't say that to them, did you?

25 A. Actually, I did. I said I would be

1 interested in knowing what management's expectations  
2 about this would be.

3 Q. And did they tell you what Mr. Feldman said  
4 about this?

5 A. No.

6 Q. And they didn't tell you because they were  
7 just trying to get you to adopt their theory of the  
8 case; right?

9 MR. McKENNA: Objection, argumentative.

10 MR. LEE: I'll withdraw the question.

11 Q. (By Mr. Lee) And you can't tell us today  
12 what you would have done, had you seen this  
13 information back during the audit, can you?

14 A. If it was brought up to us, we would have  
15 discussed it with management to understand their  
16 perspective of what it meant for their portfolio.

17 Q. You would have discussed it with Mr.  
18 Feldman?

19 A. To Mr. Feldman or Mr. Simmons.

20 Q. Mr. Feldman would have been an obvious  
21 person to have discussed this with; right?

22 A. Yes.

23 Q. But when you saw this email, when you found  
24 out about it during the SEC's investigation, you  
25 didn't ask to go talk to Mr. Feldman, did you?

1           A.    No, I wouldn't think that's appropriate for  
2   me.

3           Q.    Well, you knew that the SEC was conducting  
4   a very serious investigation of the securities laws.  
5   Wouldn't you, before expressing an opinion on this,  
6   want to have talked to Mr. Feldman? You would have  
7   wanted to talk to him during the audit period.  
8   Wouldn't it be even more important to talk to him  
9   during an SEC investigation to understand the  
10   context?

11          A.    I don't think that's my role.

12          Q.    If you had known this information, that Mr.  
13   Feldman had spoken with Charles Mac and heard this  
14   rumor about a collapsing European repo client, you  
15   can't say whether that would have changed your view  
16   on any issue in the audit; correct?

17          A.    I would have needed to discuss it with  
18   management to understand the implications before I  
19   knew how it would impact the audit.

20          Q.    And now let's go to -- well, by the way, do  
21   you know who Charles Mac is?

22          A.    I believe he was -- I don't know offhand.  
23   I don't believe he was somebody at Thornburg.

24          Q.    Did the SEC tell you who Charles Mac was?

25          A.    Not that I recall. I mean, I have a vague

1 memory of understanding that he was somebody that  
2 Patrick Feldman would correspond with regarding, you  
3 know, the portfolio or investments in the market.

4 Q. Now, let's go to Exhibit 122. Now, this is  
5 another email the SEC showed you yesterday. Do you  
6 recall that?

7 A. Yes.

8 Q. And there is an email from Mr. Goldstone to  
9 Mr. Simmons, and specifically the SEC focused on the  
10 second paragraph, which reads -- blow that up --  
11 "Also, you should know that a large Alt-A hedge fund  
12 in Europe is blowing up this afternoon. UBS Credit  
13 just mentioned it to me. They got hit with 20-point  
14 haircuts on Alt-A AAAs overnight. I think we will  
15 get this a little more gradually, but we should be  
16 ready for it. Use of proceeds will be to delever."

17 Do you recall they asked you questions  
18 about that?

19 A. Yes.

20 Q. And you have never spoken to Mr. Goldstone  
21 about what he meant when he wrote that; right?

22 A. That's correct.

23 Q. And you have never spoken to Mr. Goldstone  
24 to understand what he believed about the impact that  
25 might have on Thornburg; right?



1 A. That's correct.

2 Q. And so you can't say whether Mr. Goldstone  
3 believed that this was a situation that would have an  
4 immediate or significant impact on Thornburg at all,  
5 can you?

6 A. I think reading it there is an indication  
7 of that.

8 Q. But you haven't actually talked -- would  
9 you agree with me that the author of the email would  
10 be the person best suited to talk about what he  
11 meant?

12 A. Yes.

13 Q. You're not better situated than Mr.  
14 Goldstone to talk about what the email meant, are  
15 you?

16 A. No.

17 Q. And when he talks there about haircuts, you  
18 understand that haircuts are different from margin  
19 calls; right?

20 A. Yes.

21 Q. And you understand that haircuts change  
22 only when a repo agreement matures and rolls over  
23 into a new agreement; right?

24 A. Correct.

25 Q. So the fact that somebody got hit with

1     haircuts doesn't mean that it triggers a margin call  
2     the next day; correct?

3             A.     Correct.

4             Q.     And in fact, your own workpapers reflect  
5     your understanding that, quote, haircut increases or  
6     decreases are changes -- that these are changes in  
7     haircuts when repo agreements mature and roll over  
8     into a new agreement under current market terms;  
9     right? Does that sound familiar to you?

10            A.     Yes.

11            Q.     As something pulled -- a quote pulled  
12     directly from a KPMG workpaper; right?

13            A.     Okay.

14            Q.     So any change in haircuts, as a result of  
15     this unnamed hedge fund in Europe collapsing, would  
16     have occurred, if at all, only when Thornburg's repo  
17     agreements matured, whether weeks or months later;  
18     correct?

19            A.     The actual haircut would change, but if  
20     they know today that they're going to change their  
21     haircut by 20 points, it also indicates it's because  
22     those assets aren't valued as much, which could  
23     affect the value that day and could change the value  
24     and trigger margin calls.

25            Q.     And Mr. Goldstone's view, as written in his

1 email, is that we will get this a little more  
2 gradually; right?

3 A. Correct.

4 Q. And you're not aware of any haircut  
5 increases that actually occurred for Thornburg on  
6 February 28 or 29 as a result of a hedge fund  
7 collapse, are you?

8 A. Not specifically, no.

9 Q. And Mr. Goldstone also wrote, "We should be  
10 ready for it." And would you agree that that  
11 suggests he believed that Thornburg would be able to  
12 handle whatever impact might come from this unnamed  
13 hedge fund in Europe?

14 A. It indicates that he believed they should  
15 be ready for it.

16 Q. Right. And "should be" could mean there,  
17 "We will be ready for it"; right?

18 A. It could.

19 Q. When the SEC showed you this email, they  
20 didn't tell you what Mr. Goldstone's explanation of  
21 the email was, did they?

22 A. No.

23 Q. And they didn't tell you what information  
24 Mr. Goldstone had learned that very same day in New  
25 York about the fact that there was a potential buyout

1 of this hedge fund; right? They didn't tell you  
2 that; right?

3 A. Right.

4 Q. And they didn't tell you that Mr. Goldstone  
5 believed that because of the information he learned  
6 while he was in New York, this hedge fund that was  
7 supposedly blowing up might actually be acquired;  
8 right?

9 A. Right.

10 Q. And they didn't tell you that, when they  
11 met with you and showed you this email, that what Mr.  
12 Goldstone had learned in New York about the fact that  
13 this hedge fund might be acquired gave him some  
14 comfort that this would not have any immediate impact  
15 on Thornburg; correct?

16 A. That was not discussed; that's correct.

17 Q. All they did was they showed it to you and  
18 said, "Is this information you would have wanted to  
19 know"; right?

20 A. Yes, and it was.

21 Q. They didn't give you the context?

22 A. I didn't have the additional information  
23 you just discussed.

24 Q. And you recall that news of a hedge fund in  
25 Europe collapsing was first published the following

1 day, on February 28. Do you recall that?

2 A. I believe so, yes.

3 Q. In other words, on the 27th, when this  
4 email was sent, this had not been publicly announced  
5 or reported; correct?

6 A. Correct.

7 Q. And after you saw the news about the hedge  
8 fund actually collapsing the next day, on the 28th,  
9 you didn't go to Thornburg and ask them if they had  
10 known about this, did you?

11 A. No.

12 Q. And you didn't do an analysis to see  
13 whether that impact -- whether the collapse of the  
14 hedge fund that actually occurred on the 28th had had  
15 any impact on Thornburg, did you?

16 A. There was no need. You know, we were  
17 seeing the impact to Thornburg in their circumstances  
18 directly.

19 Q. Well, when you say, "We were seeing the  
20 impact," all you saw was the next day Thornburg  
21 received additional margin calls; right?

22 A. Correct.

23 Q. And KPMG attributed that to the disclosures  
24 in the Form 10-K itself; correct?

25 A. KPMG did not. That was management's

1     assertion.

2           Q.     And KPMG also reported that assertion in  
3     its restatement memo; correct?

4           A.     Correct.

5           Q.     And KPMG did not check to see whether the  
6     news of the European hedge fund had actually had any  
7     impact on Thornburg; correct?

8           A.     No.

9           Q.     As we sit here today, you're not aware that  
10    the collapsing European hedge fund actually had any  
11    impact on Thornburg or was what triggered the margin  
12    calls, are you?

13          A.     I think there was a lot of things happening  
14    in the market, and this was one contributing factor  
15    to the downturn in the market.

16          Q.     And you didn't -- when the SEC showed you  
17    this, did they show you the evidence that banks that  
18    issued the margin calls immediately after the filing  
19    of the Form 10-K had pointed to the actual 10-K  
20    disclosure itself as the triggering cause? Did they  
21    show you that evidence?

22          A.     No.

23          Q.     In other words, they didn't show you the  
24    internal emails from the banks themselves showing  
25    that what they were reacting to was the disclosures

1 in the Form 10-Ks?

2 A. No.

3 Q. 10-K, that is. Now, I think we're done  
4 with that.

5 You testified yesterday that the failure to  
6 disclose the delayed payment of margin calls would  
7 have changed KPMG's OTTI conclusion. Do you recall  
8 that?

9 A. Yes.

10 Q. But in fact, during the restatement period,  
11 you became aware and you learned of the delayed  
12 payment of margin calls; right?

13 A. Yes.

14 Q. And in fact, the restatement itself was not  
15 based on the delayed payment of margin calls, was it?

16 A. Well, everything would have been  
17 considered, but the driving factor for the  
18 restatement was the view that management should have  
19 understood or considered it reasonably possible that  
20 the events that occurred on the 27th, 28th could have  
21 occurred.

22 Q. 28th and 29th, you mean?

23 A. Yes.

24 Q. And that's not the delayed payment of  
25 margin calls before the 28th; correct? That was not

1 cited as a reason for the restatement; correct?

2 A. I mean, everything we're given we consider.  
3 So I can't -- it's not one particular thing and not  
4 another, but the driving factor was that we  
5 considered that the events that took place after  
6 filing appeared to be a continuation of a  
7 deterioration in their portfolio that should have  
8 been considered as possible or reasonably possible.

9 Q. And let's go to Exhibit HS. Exhibit HS is  
10 the final restatement memo; right?

11 A. Yes.

12 Q. And this sets forth procedures KPMG  
13 followed and conclusions that KPMG reached as a  
14 result of its work on the restatement; correct?

15 A. Correct.

16 Q. And let's go to Bates number 627. And if  
17 we can highlight the bullet that says, "Primary cause  
18 of the error, including fraud considerations." This  
19 was primary cause of the error in the company's  
20 originally filed financial statements; correct?

21 A. Yes.

22 Q. And let's look at the first two sentences.  
23 It says, "Management's expectations related to the  
24 performance of the company's portfolio and liquidity  
25 requirements in a rapidly changing and illiquid



1 credit market environment were based on certain  
2 judgments about the likelihood of additional margin  
3 calls and the company's ability to pay those margin  
4 calls. Those judgments were not consistent with the  
5 events that occurred on February 28, 2008, and  
6 subsequently." Correct?

7 A. Correct.

8 Q. And that means those judgments were not  
9 consistent with what actually happened after the 10-K  
10 was filed; right?

11 A. Right.

12 Q. And nowhere do you mention the delayed  
13 payment of margin calls before the Form 10-K was  
14 filed as a cause of the error leading to the  
15 restatement, do you?

16 A. We don't document it here, but it was  
17 certainly something that we communicated to the  
18 company that was information that we should have been  
19 provided that would have affected our analysis.

20 Q. But it is -- not only do you not document  
21 it there; you don't document it anywhere in this  
22 17-page memo, do you?

23 A. I don't believe so, no.

24 Q. The memo written at the time, back eight  
25 years ago in March and April, when the events were

1 fresh in your mind, when the work you did was fresh  
2 in your mind, when the analysis and conclusions you  
3 reached were fresh in your mind -- there is not one  
4 single mention of the fact that knowledge of the  
5 delayed payment of margin calls was a triggering  
6 factor for the restatement; correct?

7 A. We weren't as focused on that piece of it.  
8 It was more of a focus on what occurred shortly after  
9 filing.

10 Q. And the reason you weren't as focused on  
11 that is because you knew about it, and even knowing  
12 about it wouldn't have changed the OTTI; right?

13 A. No, I don't believe that's true.

14 Q. Because you didn't make any mention of it  
15 in the memo as a factor that made any difference at  
16 all, did you?

17 A. That doesn't mean that it wasn't a factor.

18 Q. But it wasn't an important enough factor  
19 back in March and April of 2008 to memorialize in a  
20 17-page memo that went into KPMG workpapers, was it?

21 A. I documented the primary factor.

22 Q. Right. And today, you're claiming that the  
23 failure to disclose the delayed payment of margin  
24 calls would have changed the OTTI. That's the focus  
25 of your testimony today before the SEC, even though

1 eight years ago, at the time, you made no mention of  
2 it whatsoever. Isn't that right?

3 A. In this memo, yes.

4 Q. And that's because today you're testifying  
5 on behalf of the SEC, eight years after the fact, and  
6 all of a sudden there is a new theory and that is  
7 that the delayed payment of margin calls would have  
8 changed your OTTI; correct?

9 MR. McKENNA: Objection, argumentative,  
10 Your Honor.

11 THE COURT: Well, it's very compound. Why  
12 don't you break it down.

13 MR. LEE: It was so compound, I'm having  
14 trouble remembering it.

15 A. I can answer the question. It's not a new  
16 theory. I mean, this is information that -- we went  
17 to the audit committee and told them that this is  
18 information that was not provided to us that should  
19 have been. And that's because it would have an  
20 impact on our analysis and certainly something that  
21 should have been considered as part of the analysis.

22 Q. (By Mr. Lee) But it was not important  
23 enough to put in anywhere in a 17-page-long  
24 single-spaced memo that went into your official  
25 workpapers on the process and the reasons for the

1 restatement eight years ago before there was any  
2 threat of an SEC investigation, was it?

3 A. In this section of this memo, I was  
4 documenting the primary focus of the reason for the  
5 restatement.

6 Q. I'm not now just focused on that section.  
7 You admitted then nowhere -- not just that section  
8 but nowhere in the 17 pages is that factor mentioned;  
9 correct?

10 A. This is the section that talks about the  
11 reason for the restatement. The other sections of  
12 the memo are other topics.

13 Q. And none of those topics addresses what  
14 you're testifying to today or yesterday, that all of  
15 a sudden, eight years later, the failure to disclose  
16 the delayed payment of margin calls would have  
17 changed your OTTI. It's not mentioned in the memo.

18 A. It's not all of a sudden. It's information  
19 that we should have been told, and we communicated  
20 that to Thornburg at the time.

21 Q. And even though you're now testifying it  
22 would have changed the OTTI, that was never cited as  
23 a reason in your workpapers for the restatement;  
24 correct?

25 A. I documented the primary factor.

1 Q. And when Mr. McKenna asked you questions  
2 about that, the SEC didn't -- you didn't clarify that  
3 it was a minor factor or not the primary factor, and  
4 not a factor important enough to put in the  
5 restatement memo, did you?

6 A. I wouldn't consider it a minor factor, but  
7 in this memo I was documenting the primary factor.  
8 Because I didn't mention the other factors doesn't  
9 mean that they're not important.

10 Q. Just not important enough to put in your  
11 restatement memo.

12 Let's turn to Exhibit 268, please. Exhibit  
13 268 is the management representation letter you  
14 testified about; correct?

15 A. Correct.

16 Q. And let's go to page 2. And let's go to  
17 the very top. The management representation letter  
18 begins, "We confirm, to the best of our knowledge and  
19 belief, the following representation made to you  
20 during your integrated audit." Do you see that?

21 A. Yes.

22 Q. And so this is the qualifier here that the  
23 entire premise for the management representation  
24 letter is the signer's knowledge and belief at the  
25 time; right?

1 A. Yes.

2 Q. So let's go to paragraph 4a -- or I'm  
3 sorry, 4e. Let's include the preface at item number  
4 4. So counsel for the SEC asked you about several of  
5 the provisions in the management representation  
6 letter. Do you recall that?

7 A. Yes.

8 Q. And the first provision he asked you about  
9 is, there are no events that have occurred subsequent  
10 to the balance sheet date and through the date of  
11 this letter that would require adjustment to or  
12 disclosures in the consolidated financial statements.  
13 Do you see that?

14 A. Yes.

15 Q. And would you agree with me that if a  
16 signer of this representation letter actually  
17 believed that there had been no events that have  
18 occurred subsequent to the balance sheet date and  
19 through the date of this letter that would require  
20 adjustment or disclosure, that this would not be an  
21 inaccurate statement?

22 A. So you know, assertion is management's  
23 view, and their assertion. So, yes, it's provided  
24 based on their knowledge and their belief.

25 Q. Right. So if they actually believed this

1 was true, that there weren't any events that would  
2 require adjustment to or disclosure in the financial  
3 statements, then this wouldn't be an inaccurate  
4 management representation, would it?

5 A. If they believed that and it was true, it  
6 would be accurate.

7 Q. Well, no. It doesn't say if it were true.  
8 It just says, "To the best of our knowledge and  
9 belief." So if they actually believed it was true --  
10 even if it turned out later, after the fact, with the  
11 benefit of hindsight, not to be true, if they  
12 believed it at the time, this would not be an untrue  
13 representation, would it?

14 A. I think that's fair.

15 Q. Now let's go to page 6, paragraph 22 of  
16 page 6. And I want to focus on the last sentence of  
17 that paragraph. I believe that was the sentence that  
18 counsel from the SEC had you focus on. "Declines in  
19 value of debt or equity securities classified as  
20 either available for sale or held to maturity are  
21 considered to be temporary because we have both the  
22 intent and ability to hold these impaired securities  
23 for a sufficient period of time, until maturity, if  
24 necessary, to allow for their recovery in market  
25 value."

1           Would you agree with me that if management  
2 actually believed that was true, if they actually  
3 believed they had the intent and ability to hold,  
4 even if it later turned out, with the benefit of  
5 hindsight, that they didn't have the ability, that  
6 this would not be an untrue statement?

7           A.   Not if they know they already weren't able  
8 to hold their assets, even at that time.

9           Q.   But if they believed. You agree that this  
10 statement about intent and ability to hold a  
11 sufficient period of time involves a judgment about  
12 future events; right?

13          A.   It does, but if an individual already knew  
14 there was an event where he did not have the ability  
15 to hold, I don't see how you can believe that to be  
16 true.

17          Q.   But if you didn't -- because none of us has  
18 a crystal ball and so we can't predict the future.  
19 So if you didn't know what would happen on February  
20 28th and 29th and you believed that on the night of  
21 the 27th, when this letter was signed, if you  
22 believed you had the ability to hold, then this  
23 wouldn't be untrue, would it?

24          A.   Not if you already had to sell assets  
25 because you didn't have the ability to hold them.



1 Q. So you're disputing the notion that  
2 somebody could hold a good-faith belief that turned  
3 out to be wrong later. Are you disputing that  
4 notion?

5 A. No.

6 THE COURT: Mr. Lee, would this be a good  
7 time for us to break for lunch?

8 MR. LEE: Let me just ask two more  
9 questions on this document, then we'll be done.  
10 Thank you, Your Honor.

11 Q. (By Mr. Lee) This represents, "Except as  
12 recorded or disclosed in the consolidated financial  
13 statements, there are no declines in values of  
14 certain investments that are considered to be other  
15 than temporary in accordance with," and it cites some  
16 accounting literature; right?

17 A. Right.

18 Q. And this embodies -- the  
19 other-than-temporary-impairment notion embodies the  
20 ability and intent to hold your securities to some  
21 point in the future; right?

22 A. Correct.

23 Q. And so again, if management believed that  
24 they would have the ability to hold their securities  
25 to recovery at some point in the future, even if they

1       turned out to be wrong later, this wouldn't be  
2       untrue, would it?

3           A.     Again, I think if management knew they  
4       already had to sell assets, such that they already  
5       didn't have the ability to hold, I don't see how that  
6       belief could be accurate.

7           Q.     Well, at February 27, the company had paid  
8       all of its margin calls; correct?

9           A.     For, you know, as of that exact moment.

10          Q.     Right. All the margin calls had been paid;  
11       correct?

12          A.     Correct.

13          Q.     And KPMG was aware of the volume of margin  
14       calls the company had received and signed off on the  
15       form 10-K; correct?

16          A.     We are aware of the roughly \$300 million in  
17       margin calls that were disclosed.

18          Q.     Right. And KPMG also concluded that the  
19       events of February 28th and 29th were unforeseeable;  
20       correct?

21          A.     No, that's not correct.

22          Q.     And then let's go to paragraph 31. We'll  
23       come back to that after lunch, then, if you're  
24       disputing that.

25                   Paragraph 31, I believe, is the last

1 paragraph counsel asked you about. This says, "The  
2 consolidated financial statements disclose all of the  
3 matters of which we are aware that are relevant to  
4 the entity's ability to continue as a going concern,  
5 including significant conditions and events and our  
6 plans."

7 And again, my question is: If the signers  
8 of this on the 27th believed in good faith that they  
9 had disclosed all of the matters covered by this  
10 paragraph, this wouldn't be untrue, would it?

11 A. I think that's fair.

12 MR. LEE: Nothing further on this document,  
13 Your Honor. Thank you.

14 THE COURT: All right. Let's break for  
15 about an hour. By about 1:05 let's try to be back.  
16 I know it's hard to get in and out in an hour, but  
17 let's shoot for that. Finish your sandwich. Nobody  
18 is going to start without you.

19 All right. All rise.

20 (The jury left the courtroom.)

21 THE COURT: All right. Anything we need to  
22 discuss, Mr. Lee?

23 MR. LEE: No, Your Honor.

24 THE COURT: See you in about an hour.

25 MR. LEE: Thank you, Your Honor.

1 (The lunch recess was held.)

2 THE COURT: Anything?

3 MR. McKENNA: No, Your Honor.

4 MR. LEE: No, Your Honor.

5 (The jury entered the courtroom.)

6 THE COURT: All right. Everyone be seated.

7 All right, Ms. Hall, I'll remind you that  
8 you're still under oath.

9 Mr. Lee, if you wish to continue your  
10 cross-examination of Ms. Hall, you may do so at this  
11 time.

12 MR. LEE: Thank you, Your Honor.

13 THE COURT: Mr. Lee.

14 Q. (By Mr. Lee) Good afternoon, Ms. Hall.

15 A. Good afternoon.

16 Q. Do you recall before we broke for lunch, I  
17 was asking you some questions about the management  
18 representation letter; right?

19 A. Yes.

20 Q. And I was specifically asking you -- well,  
21 I asked you questions about a number of provisions,  
22 but one of those provisions or actually two of those  
23 provisions I asked you about was about the company's  
24 assertion that it had the intent and ability to hold  
25 its assets until recovery. Do you recall that?

1 A. Yes.

2 Q. And I asked you if management actually, in  
3 good faith, believed that they had the intent and  
4 ability to hold, that representation would not be  
5 untrue. Do you recall that?

6 A. Yes.

7 Q. And you said, I think about five times,  
8 "Well, if management knew that it had already sold  
9 assets, it could not make that assertion"; right?

10 A. Sold assets because they needed to, to meet  
11 the margin calls.

12 Q. Right. And in fact, the fact of the matter  
13 is, management did not sell assets in the period  
14 leading to the Form 10-K; correct?

15 A. I believe they did.

16 Q. In fact, management did not sell assets at  
17 all during the period leading up to the Form 10-K;  
18 correct?

19 A. I believe they sold some of their  
20 securities that were in their loan portfolio.

21 Q. The interest-only strips, are you referring  
22 to?

23 A. Yes.

24 Q. And you conceded this morning that even  
25 though you called the sale of the interest-only

1 strips a sale, it's actually a financing; right?

2 A. That's correct.

3 Q. So it's not actually a sale of assets for  
4 accounting purposes; right?

5 A. The I/O strips would be -- the sale of the  
6 I/O strips would be accounted for as a financing.

7 Q. Right. And when you met with the SEC, did  
8 they tell you that the Court in this case actually  
9 found that those transactions were not the sale of  
10 assets?

11 A. No.

12 Q. So when you sort of refused to answer my  
13 question about if management's good-faith belief in  
14 their intent and ability would make that a true  
15 representation, and you kept referring to if you know  
16 you've already sold assets, that observation is  
17 actually factually both inaccurate and irrelevant,  
18 isn't it?

19 MR. McKENNA: Objection, Your Honor.

20 THE COURT: Overruled.

21 A. No, I believe if you're in a position when  
22 you're not able to meet your obligations as they  
23 become due, I don't believe you can in turn have the  
24 intent and ability to hold your assets.

25 Q. (By Mr. Lee) And in fact, the company, for

1 accounting purposes, they did not sell assets;  
2 correct?

3 A. For accounting purposes, that's correct.

4 Q. And in fact, on February 28, when the Form  
5 10-K was filed, the company had paid all of its  
6 margin calls; correct?

7 A. That's correct.

8 Q. Now, right before we broke, you said that  
9 KPMG did not conclude that the magnitude of margin  
10 calls on the 28th and the 29th were not foreseeable.  
11 Is that your testimony?

12 A. That's correct.

13 Q. All right. Well, let's take a look at  
14 Exhibit HR. We looked at this this morning or  
15 yesterday. This is the memo to the workpapers on  
16 internal control of a financial report; correct?

17 A. Yes.

18 Q. And this is a memo written by you?

19 A. Yes.

20 Q. And it's initialed by you?

21 A. Yes.

22 Q. And it's also, in the lower right-hand  
23 corner, initialed by Ms. Reinhart; correct?

24 A. That's correct.

25 Q. And if we could go to page 5 of the lower

1 portion of Bates 890 and the paragraph that says,  
2 "Timing." And let's go to the second sentence. It  
3 reads, "So while the conclusion that was reached by  
4 management during their financial reporting process  
5 was considered, in hindsight, to be incorrect, it  
6 appears that the magnitude of the decline in asset  
7 values that occurred on February 28th and 29th were  
8 not foreseeable"; correct?

9 A. That's correct. I'd say we determined that  
10 the magnitude of the decline was not foreseeable.

11 Q. And it's the decline in asset values that  
12 actually triggered margin calls; right?

13 A. That's correct.

14 Q. And you believed this was accurate at the  
15 time you wrote it; right?

16 A. Correct.

17 Q. And that was in March of 2008; right?

18 A. That's correct.

19 Q. Before the SEC got involved; right?

20 A. Correct.

21 Q. And it's only today that you now are  
22 testifying that KPMG, in fact, did not conclude that  
23 the magnitude of the margin calls was not  
24 foreseeable?

25 A. We considered that the magnitude of the



1 decline would not be foreseeable, but we concluded  
2 that the potential for margin calls to be received in  
3 excess of available liquidity -- that potential  
4 likelihood should have been considered as reasonably  
5 possible.

6 Q. Reasonably possible. Should have been  
7 considered as reasonably possible.

8 A. Correct.

9 Q. Following the restatement, Ms. Hall, KPMG  
10 took steps to assess the responsibility for the  
11 restatement; is that right?

12 A. Can you repeat that?

13 Q. Following the actual restatement, KPMG took  
14 steps to assess responsibility, internal  
15 responsibility within KPMG, for the restatement;  
16 correct?

17 A. I believe so, yes.

18 Q. And KPMG assigned a senior auditor for KPMG  
19 to actually carry out that assessment; correct?

20 A. Correct.

21 Q. And this senior auditor was named James  
22 Browning; correct?

23 A. That seems reasonable.

24 MR. LEE: Right. And no relation to the  
25 Court, for the record.

1 Q. And Mr. Browning -- he was a very senior  
2 audit partner at KPMG; right?

3 A. He was a partner in our Houston office that  
4 had supervisory responsibility.

5 Q. Supervisory responsibility over the  
6 Albuquerque office?

7 A. Yes.

8 Q. And he did not participate in the  
9 underlying audit; correct?

10 A. Correct.

11 Q. And so he was brought in as a set of  
12 outside eyes to try to determine what had happened at  
13 KPMG with respect to the restatement; correct?

14 A. Correct.

15 Q. And one of the things he looked at was the  
16 information that was actually known to the engagement  
17 team at the time of the filing of the Form 10-K;  
18 correct?

19 A. Correct.

20 Q. And following that, KPMG prepared what's  
21 called a restatement assessment form. Do you recall  
22 that?

23 A. I understood that during the investigation  
24 period, yes.

25 Q. And let's look at Exhibit IO. Let's just

1 blow up the top first. So this is entitled  
2 "Southwest area restatement assessment form." Do you  
3 see that?

4 A. Yes.

5 Q. And it says, "Form to be completed by the  
6 BUPPP." That's a professional practice partner;  
7 right?

8 A. Yes.

9 Q. And it relates to Thornburg Mortgage for  
10 the -- relating to the 2007 financials which were  
11 restated on March 11, 2008; right?

12 A. Correct.

13 Q. And it identifies Ms. Reinhart as the  
14 engagement partner, and it identifies Mr. Womack as  
15 the concurring review partner, and it identifies you  
16 as manager; right?

17 A. Correct.

18 Q. And it goes down to -- let's go down to the  
19 box that says, "Description of restatement issue" and  
20 blow that up. And it basically summarizes what  
21 happened. The company received margin calls which it  
22 could not meet within a few days of issuance of audit  
23 report. This called into question whether  
24 substantial doubt existed as to going concern at date  
25 of report. Consultation with DPP occurred." DPP is

1 your national office; correct?

2 A. Right.

3 Q. Department of Professional Practice?

4 A. Yes.

5 Q. "And accounting for securities as available  
6 for sale was also questioned. It was determined that  
7 the accounting for the available-for-sale securities  
8 should be restated and the auditor's report would be  
9 reissued with modification related to going concern."  
10 Do you see that?

11 A. Yes.

12 Q. And let's go to the second page, the  
13 grading considerations. And so you see there are a  
14 possibility of three scores that a member of the  
15 engagement team could have received as a result of  
16 that assessment; right?

17 A. Right.

18 Q. And it ranges from zero to two, and zero is  
19 the best score; right?

20 A. Correct.

21 Q. And two is the worst score; right?

22 A. No, it's the opposite. Let me read it for  
23 a second. You're correct.

24 Q. So zero is the worst score, and two is the  
25 best score; right?

1 A. Correct.

2 Q. And under zero, the grading consideration,  
3 if there had been fraud or intentional misstatement,  
4 that might yield a score of zero because if there had  
5 been fraud or intentional misstatement, members of  
6 the engagement team wouldn't be responsible; correct?

7 A. Correct.

8 Q. That's the underlying rationale; right?  
9 The same with typographical or reclassification only,  
10 client decided to restate; even though immaterial,  
11 less severe matters, SEC position that could not be  
12 anticipated. Those are all a zero; right?

13 A. Correct.

14 Q. And then one, the middle score, says a  
15 single issue, highly technical issue, or evolving  
16 area, single year involved, DPP desktop review did  
17 not identify additional issue. That's the middle  
18 score.

19 And then the worst score is the score of 2,  
20 which says, "Multiple issues restated,  
21 blocking-and-tackling-type issues, multiple years,  
22 DPP desktop or in-depth review identified additional  
23 issues." Do you see that?

24 A. Yes.

25 Q. And so that is identifying the

1 circumstances that would result in the worst of the  
2 three possible scores; correct?

3 A. Correct.

4 Q. And let's go to the grading. And these are  
5 the recommended grading for each of the members of  
6 the team. You see Ms. Reinhart received a 2; right?

7 A. Yes.

8 Q. And Mr. Womack received a 2, and you  
9 received a 2, and Mr. Taylor received a 2, and Mr.  
10 McLamb received a 1. Do you see that?

11 A. Yes.

12 Q. And so you received the worst possible  
13 score corresponding to the grading considerations  
14 above as a result of your work on the 2007 audit;  
15 correct?

16 A. Correct.

17 Q. And now let's go up to the grading  
18 rationale. It's a narrative. And that says,  
19 "Grading considered that the issues involved were  
20 those receiving high focus of attention by the firm."  
21 Do you see that?

22 A. Yes.

23 Q. And it goes on to state, "Grading as it  
24 relates to the engagement partner, manager, and  
25 concurring reviewer considers this and the

1 information at hand and disclosed"; correct?

2 A. Correct.

3 Q. And that tells you that KPMG, Mr. Browning,  
4 an independent senior partner with responsibility for  
5 the Albuquerque office, concluded in June of 2008  
6 that you and Ms. Reinhart and Mr. Womack had all the  
7 information you needed at hand and disclosed in order  
8 to reach a proper judgment on the company's financial  
9 statements; isn't that correct?

10 A. I wouldn't go that far, no.

11 Q. And you see this was -- if you go back to  
12 the first page -- well, you do see it refers to "the  
13 information at hand and disclosed"; right?

14 A. Right, the information that he was aware  
15 of.

16 Q. And this was -- you see it was approved in  
17 June of 2008, and it was submitted to DPP in June of  
18 2008; correct?

19 A. Correct.

20 Q. Now, yesterday the SEC showed you a dozen  
21 or so emails, and asked you if these were emails that  
22 you would have wanted to have seen during the audit;  
23 correct?

24 A. Yes.

25 Q. And they showed you a bunch of emails, a

1 dozen or so emails, and they asked you, at least in  
2 some of them, to speculate about the meeting;  
3 correct?

4 A. They asked me questions about what was  
5 written in the emails; correct.

6 Q. And they asked you what you thought or how  
7 you interpreted those emails; right?

8 A. My thoughts about them, yes.

9 Q. And they asked you to speculate about  
10 emails written by Deborah Burns. Do you recall that?

11 A. I don't recall the specific question about  
12 it, but I was shown that email and asked a question.

13 Q. And they asked you to speculate about a  
14 memo written by Mr. Buniel; right?

15 A. They asked me questions about a memo  
16 written by Mr. Buniel.

17 Q. And they asked you questions about emails  
18 written by Ms. Starrett and Mr. Simmons and Mr.  
19 Goldstone; right?

20 A. Correct.

21 Q. And they asked you to speculate about what  
22 those emails meant or referred to; right?

23 A. They asked me questions about my thoughts  
24 about the matter that was discussed.

25 Q. And they didn't show you any of the context



1 surrounding those emails, did they?

2 A. Not that I know of.

3 Q. And we've now seen, through our examination  
4 this morning and yesterday afternoon, additional  
5 context, additional information that helps shed light  
6 on at least some of those emails, doesn't it?

7 A. Yes.

8 Q. And you haven't seen the testimony here in  
9 court of some of the witnesses such as Ms. Burns, who  
10 explained what she actually meant when she wrote some  
11 of the emails the SEC asked you to speculate about.

12 A. I have not.

13 Q. To this day, you don't know what she  
14 actually meant, do you?

15 A. That's correct.

16 Q. When you met with the SEC when you had your  
17 private meetings with them -- I think yesterday you  
18 had four, at least four private meetings with the  
19 SEC; right?

20 A. Yes.

21 Q. In those private meetings with the SEC,  
22 they didn't give you any additional context. They  
23 simply showed you those emails and said, "Is this  
24 something you would have liked to have known"; right?

25 A. That's correct.

1 Q. And they didn't tell you what some of the  
2 authors of the emails said they meant, the people who  
3 actually wrote the emails -- they didn't tell you  
4 what the authors themselves have said they meant, did  
5 they?

6 A. I don't believe so.

7 Q. And that's what we've been trying to  
8 establish and that's the reason for my  
9 cross-examination of you today. Do you understand  
10 that?

11 A. I do.

12 MR. LEE: I have no further questions, Your  
13 Honor.

14 THE COURT: Thank you, Mr. Lee.

15 Mr. McKenna, do you have redirect of Ms.  
16 Hall?

17 MR. MCKENNA: I do, Your Honor.

18 THE COURT: Mr. McKenna.

19 REDIRECT EXAMINATION

20 BY MR. MCKENNA:

21 Q. Good afternoon, Ms. Hall.

22 A. Good afternoon.

23 Q. I know you've been up there a while. I'll  
24 try to keep this as brief as I can, but I think there  
25 are a few points I need to clarify or correct about

1 some of the questions you were asked. Okay?

2 A. Okay.

3 Q. Let's start with when I asked you questions  
4 yesterday. Did I ever ask you to speculate about  
5 what emails meant?

6 A. No.

7 Q. And let's just go back to that Exhibit IO,  
8 please.

9 Will you bring that up, Mr. King?

10 Can you just highlight that submitted  
11 approved section, that section of this form? You see  
12 it's in the top third in the form of work? That last  
13 approved line, Mr. Lee said this was all approved.  
14 It's blank, isn't it? Nobody dated that, did they?

15 A. That's correct.

16 Q. So do you know if this was finalized as to  
17 you?

18 A. I do not.

19 Q. Okay. Can we bring up Exhibit PU, please?  
20 Now, this was a document Mr. Lee asked you about  
21 yesterday.

22 THE CLERK: It's not in evidence.

23 THE COURT: Why don't you pull it off the  
24 screen?

25 THE CLERK: It's not on there. That's a

1 different one.

2 MR. McKENNA: This was a new one, so we  
3 don't have this exhibit.

4 THE COURT: It has not been admitted so --

5 MR. McKENNA: Oh, okay. I'm sorry, I'm  
6 misreading my notes. I need Exhibit BY. My fault.

7 Q. (By Mr. McKenna) This is the document I  
8 meant to refer to. Do you recognize this document?

9 A. Yes.

10 Q. And who prepared this document?

11 A. Tara Baucom.

12 Q. And can we look a little further down,  
13 please, Mr. King?

14 When Mr. Lee asked you about this, he  
15 pointed to this line under "Management" that said,  
16 "Jenni Hall inquired of Jane Starrett, Clay Simmons,  
17 and Larry Goldstone on February 27, 2008." And he  
18 said, and I'm quoting here, "You wrote here this  
19 sentence." Did you actually write that sentence?

20 A. I did not.

21 Q. Who did?

22 A. I believe Tara Baucom.

23 Q. Okay. And you don't normally write in the  
24 third person, do you, about "Jenni Hall inquired"?

25 A. No.

1 Q. The context of this was trying to determine  
2 when that down-to-date meeting took place with Mr.  
3 Simmons and Ms. Starrett. Do you recall that?

4 A. Yes.

5 Q. And when you had given deposition or  
6 investigative testimony before, had you been made  
7 aware of some of the facts that we talked about  
8 yesterday, such as Mr. Simmons flying off to Dallas  
9 at noon on February 27?

10 A. Sorry? When -- what's the time period  
11 you're asking about?

12 Q. I'm asking when you -- let's just say when  
13 you gave your deposition, which was December of 2012,  
14 were you aware that Mr. Simmons had flown off to  
15 Dallas at noon on the 27th?

16 A. I don't believe I recalled that, no.

17 Q. You were aware of Ms. Starrett's jury duty,  
18 though; is that right?

19 A. Yes.

20 Q. Okay. So when we kind of narrowed it down  
21 to thinking that the meeting took place on the  
22 evening of February 26, was that based on the new  
23 knowledge about Mr. Simmons' travel?

24 A. Yes.

25 Q. Okay. And let me just ask you this.

1 Whether or not this meeting took place on the 26th or  
2 the 27th, do you believe you should have been told at  
3 that time about the unmet margin calls that Thornburg  
4 had had leading up to that meeting?

5 A. Yes.

6 Q. It really doesn't matter whether it's the  
7 26th or the 27th, does it?

8 A. No. Right. It really should have been  
9 before that.

10 Q. Yesterday, as well, Mr. Lee said he had  
11 some documentation showing that I believe you had  
12 spent 524 hours working on the audit prior to the  
13 filing, not counting the restatement period. Do you  
14 recall that?

15 A. Yes.

16 Q. And then he asked you if you'd been working  
17 12-hour days for the next two weeks, and I believe  
18 you said no because you had another -- what did you  
19 say?

20 A. I had another engagement that I was working  
21 on.

22 Q. Okay. But nonetheless, Mr. Lee blew past  
23 that, and the next time he referred to it, he said  
24 you worked 600 hours on the engagement. Do you  
25 remember that?

1 A. Yes.

2 Q. And then two sentence later that had jumped  
3 up to 650 hours. Do you remember that?

4 A. Yes.

5 Q. So just to be clear, if the jury wants to  
6 know -- if it even matters -- how much time you  
7 actually spent on the audit, should they trust what  
8 Mr. Lee said or should they look to some  
9 contemporaneous KPMG documents?

10 A. Documentation would be better.

11 Q. Mr. Lee also talked about the engagement  
12 team at KPMG employed for the Thornburg audit. Do  
13 you remember that?

14 A. Yes.

15 Q. Specifically he asked about Mr. Taylor,  
16 about him being put on the initial team because he  
17 had special expertise with mortgage-type companies?

18 A. Correct.

19 Q. What was the company that Mr. Taylor's  
20 expertise came from?

21 A. Countrywide.

22 Q. What happened to Countrywide?

23 A. They went bankrupt.

24 Q. Like Thornburg?

25 A. Yes, or they were acquired; more accurate.

1 Q. Could we go to Exhibit DY, please? Do you  
2 recall this document, Ms. Hall?

3 A. Yes.

4 Q. And what is it?

5 A. This is a memo in our restatement  
6 workpapers.

7 Q. Okay. Can we go to page 3 of this  
8 document, please? And this was a document where  
9 Mr. Lee was talking about the magnitude or the margin  
10 calls on February 28, them being of the likelihood of  
11 a natural disaster. Do you remember that?

12 A. Yes.

13 Q. Can we find that language, Mr. King? I  
14 don't know exactly where it is.

15 A. Last sentence in the first paragraph.

16 Q. So it was the company's position -- so the  
17 company's position -- that the magnitude of the  
18 decline on February 28 could not have been seen and  
19 the likelihood of the occurrence was akin to a  
20 national disaster. Remember, we looked at that  
21 schedule of margin calls and we looked at what had  
22 happened on February 28, then we compared it to what  
23 happened a week earlier, on February 21?

24 A. Yes.

25 Q. Do you recall the difference?



1           A.     Yes.    The margin call on the 21st was much  
2           higher than the margin calls received on the 28th.

3           Q.     Almost \$100 million higher; right?

4           A.     Correct.

5           Q.     So basically what management was telling  
6           you was, you know, they had an earthquake on February  
7           21, then a week later they had a slightly lesser  
8           tsunami?

9           A.     That's one way to look at it.

10          Q.     Did you adopt management's interpretation?

11          A.     No.

12          Q.     Mr. Lee also went through some liquidity  
13          reports with you and he pointed out that it appeared  
14          that there were a couple days in some of the  
15          liquidity reports in KPMG's files that did show  
16          slightly negative balances.   Do you recall that?

17          A.     Yes.

18          Q.     And I believe you testified that you hadn't  
19          seen those prior to today or yesterday or whenever he  
20          showed them to you.

21          A.     That's correct.

22          Q.     And when I was asking you questions about  
23          the liquidity report, what period were we focusing  
24          on?   Remember, we had the audit period, the  
25          restatement period, and the investigation period?

1 A. Yes.

2 Q. What period were we focusing on?

3 A. The audit period.

4 Q. And you had not seen those in the audit  
5 period, had you?

6 A. That's correct.

7 Q. And if you had, do you think you would have  
8 done something about it?

9 A. Yes, I would have taken them to management  
10 to understand why their cash was negative.

11 Q. And similarly, if Ms. Reinhart had seen  
12 such a report, do you think she would have done  
13 something with it?

14 A. Yes.

15 Q. The same kind of thing?

16 A. Yes.

17 Q. Could we go to Exhibit 00, please? So this  
18 is one of those going concern memos that we looked at  
19 several of. Do you see that?

20 A. Yes.

21 Q. It's from you. If we could go to page 7 of  
22 this PDF. If you could blow up the one towards the  
23 bottom there.

24 Mr. Lee also asked you about this, and he  
25 referenced the \$250 million in margin calls that

1 Thornburg had received in the last week or so. Do  
2 you remember that?

3 A. Yes.

4 Q. And he contrasted that with a number that  
5 was 400-something, that was slightly less than half a  
6 million dollars, that the company had in available  
7 cash at about the same time. Do you remember that?

8 A. Yes.

9 Q. What this reflects -- doesn't this reflect  
10 that the company has had around \$250 million in  
11 margin calls? And he didn't talk to you about the  
12 clause after the comma, "covered by the recent equity  
13 offerings." So what does that mean to you?

14 A. That means that they had the significant  
15 inflow of cash from the equity offerings which would  
16 cover the amount of margin calls that were being  
17 discussed.

18 Q. Would cover or the word used is "covered"  
19 in the past tense; correct?

20 A. Right.

21 Q. So did you understand this to mean that  
22 this \$250 million had already been covered with the  
23 equity raises that Thornburg had made?

24 A. Yes.

25 Q. So this doesn't mean that Thornburg was out

1 of cash and it had more than \$200 million in margin  
2 calls more than available cash, does it?

3 A. No.

4 Q. Let's go to Exhibit AV, please. All right.  
5 So this is -- we looked at this before, as well.  
6 This is your email to Mr. McLamb where you're  
7 forwarding the Thornburg going concern analysis; is  
8 that right?

9 A. That's right.

10 Q. And I believe we established yesterday that  
11 the going concern analysis at least was received. Do  
12 you recall the date?

13 A. No.

14 Q. Let's go down a little bit, then. Right  
15 here. So that's an email on the 19th saying you  
16 received their documentation yesterday. Does that  
17 refresh your recollection?

18 A. Yes, February 18.

19 Q. Now, if we could go to page 6 of this PDF,  
20 and if we could highlight that language we looked at  
21 a couple of times about margin calls being met on a  
22 normal daily basis. There you go.

23 Mr. Lee talked to you about this language;  
24 do you remember that?

25 A. Yes.

1 Q. And he said that margin calls made or  
2 received are being met, and then he said comma. Is  
3 there a comma in that sentence after "met"?

4 A. No.

5 Q. There is not, is there?

6 A. No.

7 Q. So what this says is that they're being met  
8 and -- not or -- and the change in collateral value  
9 is being verified on a normal daily basis. What do  
10 you take that to mean?

11 A. I took this sentence to mean that as they  
12 are receiving margin calls, they're meeting them in  
13 the normal course.

14 Q. And on a normal daily basis?

15 A. Yes.

16 Q. Now, if we can go down a couple more  
17 paragraphs on the same page, the very last line here.  
18 I didn't notice this, up one more paragraph, the last  
19 line in the paragraph above that. I hadn't noticed  
20 this until Mr. Lee pointed it out. So this was  
21 received on February 18. What does it say there?

22 A. That the company has made all margin calls  
23 to date.

24 Q. That's not true, is it?

25 A. No.

1 Q. Because they had that Credit Suisse margin  
2 call on the 13th that wasn't met till the 21st.

3 A. That's correct.

4 Q. This was sent on the 18th.

5 A. That's correct.

6 Q. So all margin calls had not been met to  
7 date, had they?

8 A. They had not.

9 Q. On the final version of this, we had that  
10 short paragraph that was a sentence or two where it  
11 said you had reviewed the daily cash liquidity  
12 reports. Do you recall that?

13 A. Yes.

14 Q. And you testified, in fact, that hadn't  
15 happened and you meant to, but had not removed it  
16 from the memo; is that right?

17 A. That's correct.

18 Q. And Mr. Lee was saying, "Well, nobody told  
19 us this. It's been eight years." Do you remember  
20 all that?

21 A. Yes.

22 Q. Do you remember having your deposition  
23 taken?

24 A. Yes.

25 Q. It was taken on December -- in December of

1 2012; is that right?

2 A. Yes.

3 Q. Do you remember the first day, Mr. Lee  
4 spent almost nine hours asking you questions?

5 A. Yes.

6 Q. Okay. And then the next day, I got to ask  
7 you questions for about two and a half hours, then  
8 Mr. Lee got another hour and a half?

9 A. That sounds right.

10 Q. Does that sound right? Okay. I did check  
11 during the break. Did Mr. Lee ever once ask you a  
12 question about that sentence in the going concern  
13 memo during those ten and a half hours of  
14 questioning?

15 A. I don't believe so, no.

16 Q. And he's talked an awful lot about fairness  
17 up here. Do you think it's fair to him to accuse you  
18 of not pointing that out when he questioned you for  
19 ten and a half hours and didn't even bother to ask?

20 A. No.

21 Q. Now, in that same going concern memo -- and  
22 I won't pull it up, because I'm not sure exactly  
23 where it is -- but it's also got that statement about  
24 a decline in values of more than 2 to 3 percent being  
25 remote. Do you recall that?

1 A. Yes.

2 Q. Okay. And you said that you had no reason  
3 to doubt that Mr. Simmons believed that at the time  
4 he said it.

5 A. Correct.

6 Q. Okay. But let me ask you this. If things  
7 changed after he said it and he had reason to doubt  
8 that they would not decline more than 2 to 3 percent,  
9 should he have come to you or Ms. Reinhart or  
10 somebody at KPMG and told you?

11 A. Yes.

12 Q. And in fact, we looked at emails, the  
13 emails about the collapsing hedge fund. Do you  
14 remember those?

15 A. Yes.

16 Q. Before the filing of the 10-K; right?

17 A. Yes.

18 Q. Nobody came to you and told you about that,  
19 did they?

20 A. No.

21 Q. In fact, nobody came to anybody at KPMG and  
22 told them about that, did they?

23 A. No.

24 Q. Mr. Simmons certainly didn't, did he?

25 A. He did not.



1 Q. You were also questioned about that tie-out  
2 document that was Exhibit DL that was found in the  
3 tie-out workpapers of KPMG. Do you remember that?

4 A. Yes.

5 Q. And Mr. Lee said several times that you're  
6 recalling now, eight years later, that, you know, you  
7 looked at that for the purpose of tying out that \$300  
8 million. Do you remember that?

9 A. Yes.

10 Q. Have you ever testified any differently,  
11 either in December of 2012 when you had your  
12 deposition taken for a day and a half, almost two  
13 days, or prior, when you had your investigative  
14 testimony taken by the SEC? Have you ever testified  
15 any differently about that document?

16 A. No.

17 Q. And in fact, Mr. Lee played three clips  
18 from the video, the December 2012 video. Do you  
19 remember that?

20 A. Yes.

21 Q. In any one of those clips did you say  
22 anything inconsistent with your testimony either  
23 today, yesterday, or at any time previously?

24 A. No.

25 Q. And when did you receive that tie-out

1 document?

2 A. The final form 10, this version of the  
3 10-K?

4 Q. Well, this is the version with the three  
5 pages that Mr. Lee talked to you about at some  
6 length. When did you receive those three pages?

7 A. It was right before filing.

8 Q. So late in the day on February 27?

9 A. Correct.

10 Q. Okay. So you received those well after the  
11 emails that we looked at yesterday, saying things  
12 like, "All margin calls have been met, margin calls  
13 have been met on a normal daily basis," et cetera?

14 A. Correct.

15 Q. You received that after all those emails?

16 A. Yes.

17 Q. And are you aware that defendants have  
18 testified -- both of them have testified that they've  
19 never even seen that tie-out document before?

20 A. No, I was not aware of that.

21 Q. Are you aware that neither one of them  
22 testified that they told anybody at Thornburg to give  
23 that tie-out document to KPMG?

24 A. No, I wasn't aware of that.

25 Q. Exhibit 284, please. So Mr. Lee talked to

1 you at length about this document, as well. Do you  
2 remember that?

3 A. Yes.

4 Q. That PBC. What does that stand for?

5 A. Prepared by client.

6 Q. Prepared by; is that right?

7 A. Yes.

8 Q. Not provided by?

9 A. That's correct.

10 Q. Because Mr. Lee did a little switch there;  
11 right? He kept saying it was provided by  
12 Mr. Rhoades, and Mr. Simmons isn't on any of these  
13 emails. Do you remember that?

14 A. Yes.

15 Q. What that says is who it was prepared by;  
16 is that right?

17 A. That's correct, yes.

18 Q. And it says it was prepared by Mr. Rhoades  
19 and Mr. Simmons?

20 A. Correct.

21 Q. And that's consistent with all your  
22 testimony about Ms. Starrett and Mr. Simmons taking  
23 the lead on this, et cetera?

24 A. Yes.

25 Q. You were also asked about you only getting

1 this ten minutes before the audit committee meeting.

2 Do you remember that?

3 A. Yes.

4 Q. And you said you were looking at it and you  
5 may have been looking at it on your screen during the  
6 audit committee meeting; correct?

7 A. Correct.

8 Q. Regardless, you've had an opportunity to  
9 look at this document in some length at this point;  
10 right?

11 A. Yes.

12 Q. Having had a full opportunity to look at  
13 this as much as you wanted to, does it change any of  
14 your conclusions about the company's ability to hold  
15 or its going concern analysis?

16 A. For the restatement period, no.

17 Q. Now, Mr. Lee also asked you about the  
18 collapsing hedge fund emails, and he asked you  
19 whether you, in fact, audit rumors. Do you remember  
20 that?

21 A. Yes.

22 Q. You said you audit all information.

23 A. We consider all information.

24 Q. Consider all information. Thank you. Now,  
25 in either the email that initially Mr. -- I think it

1 was Fellers that sent to Mr. Goldstone and Mr.  
2 Simmons, or Mr. Goldstone's email back to Mr. Simmons  
3 talking about expecting the 20 percent haircuts, was  
4 the word "rumor" used in either one of those emails;  
5 do you recall?

6 A. I don't believe so.

7 Q. Right. It was not. Let's look at Exhibit  
8 45 now. And blow it up so we can see what this is.

9 So this is an email that Mr. Goldstone  
10 sends to his board of directors copying Mr. Simmons  
11 and Ms. Starrett on February 15. And can we go down  
12 to the second paragraph? I'm going to have to find  
13 it here. It starts with, "This morning we received a  
14 surprising number of margin calls in the amount of  
15 \$113 million as mortgage security prices in AAA  
16 super-senior segment of the Alt-A collateral MBS  
17 market suddenly and significantly fell overnight."  
18 Mr. Goldstone writes, "Apparently, this decline in  
19 prices was the result of an overnight rumor by UBS  
20 that they owned \$30 to \$40 billion of this type of  
21 MBS and that they were going to sell it at fire sale  
22 prices. That rumor was subsequently denied by UBS,  
23 but nonetheless, it had a very negative impact on MBS  
24 prices."

25 So is this Mr. Goldstone acknowledging that

1 rumors in fact, even if they're denied, can have a  
2 very negative impact on mortgage-backed security  
3 prices?

4 A. It appears so, yes.

5 Q. Now, in Mr. Goldstone's email about this,  
6 he talked about expecting -- about how the collapsing  
7 hedge fund received 20-point haircuts and how he  
8 expected that, as well, although perhaps more  
9 gradually. Do you remember that?

10 A. Yes.

11 Q. And Mr. Lee said -- and he said this twice,  
12 actually -- that haircuts change only when a repo  
13 agreement matures. Do you recall that?

14 A. Yes.

15 Q. And he said that they can't trigger margin  
16 calls. Do you remember that?

17 A. Yes.

18 Q. Would you be surprised to know that Mr.  
19 Goldstone testified under oath in 2010 that, in fact,  
20 haircuts can be changed by lenders at their whim?

21 A. No, I did not know that.

22 Q. Let me just read you what he did say,  
23 actually.

24 MR. LEE: Your Honor, I would just object,  
25 reading his out-of-court statements is hearsay.

1 THE COURT: Is this the deposition or --

2 MR. McKENNA: It's a deposition, Your  
3 Honor. It's a statement of a party opponent.

4 THE COURT: I think it needs to be  
5 presented a different way. Sustained.

6 MR. McKENNA: Very well.

7 Q. (By Mr. McKenna) Ms. Hall, do you also  
8 recall Mr. Lee stating that the collapsing hedge fund  
9 had no impact on Thornburg or the decline in their  
10 asset values was based upon their filing as opposed  
11 to the collapsing hedge fund?

12 A. Yes.

13 MR. McKENNA: May I approach, Your Honor?

14 THE COURT: You may.

15 Q. (By Mr. McKenna) Ms. Hall, do you  
16 recognize the document I've just handed you?

17 A. Yes.

18 Q. What is it?

19 A. It's an email from myself to Clyde and  
20 Cynthia and John Taylor where I'm forwarding an  
21 article.

22 Q. What do you say in your email?

23 A. I say, "This is the article that TMA,"  
24 which is Thornburg, "said set off the margin calls  
25 subsequent to file."

1 Q. And what is the article that you're  
2 forwarding?

3 A. It's an article about the Peloton hedge  
4 fund that went under or had to liquidate a  
5 significant amount of securities.

6 Q. And is that the hedge fund that was  
7 referred to in the February 27 emails between Mr.  
8 Goldstone and Mr. Simmons?

9 A. I believe so, yes.

10 Q. So in fact, is this -- and the email from  
11 Mr. Buniel to yourself copying Ms. Starrett, in fact,  
12 are they laying blame to the selloff in  
13 Thornburg's -- or the decline in value in Thornburg's  
14 assets and the margin calls on that collapsing hedge  
15 fund?

16 A. Yes.

17 MR. LEE: Objection, misstates the  
18 document.

19 THE COURT: Overruled.

20 A. Yes.

21 Q. (By Mr. McKenna) Mr. Lee also questioned  
22 you at length about the fact that the unmet margin  
23 calls and the untimely met margin calls leading up to  
24 the filing of the 10-K on February 28, the morning of  
25 February 28, were not specifically called out in your



1 memorandum. Do you remember that?

2 A. Yes.

3 Q. Are you aware of the amount of the stock  
4 price drop that Thornburg's stock took on March 3,  
5 2008, when it was disclosed that they had unmet  
6 margin calls?

7 A. I don't recall the amount.

8 Q. Would you be surprised to know it was over  
9 50 percent?

10 A. That does sound familiar.

11 Q. And Mr. Lee showed you a lot of KPMG  
12 workpapers. He read various sections to you. He  
13 noted things like check marks on various documents,  
14 et cetera. Do you recall that?

15 A. Yes.

16 Q. Ms. Hall, would it be consistent with  
17 defendants committing fraud and with lying to their  
18 auditors if, in fact, some of those lies made it into  
19 KPMG's workpapers?

20 MR. LEE: Objection, argumentative, lack of  
21 foundation.

22 THE COURT: Overruled.

23 A. Can you repeat the question?

24 Q. (By Mr. McKenna) My question is: Would it  
25 be consistent with claims that defendants lied, Mr.

1 Goldstone and Mr. Simmons lied to KPMG and that they  
2 committed fraud if some of those lies made their way  
3 into KPMG's workpapers?

4 A. Yes.

5 Q. It would be consistent?

6 A. Yes.

7 Q. The ability-to-hold question turns on  
8 whether Thornburg as of December 31 had the ability  
9 to hold its ARM assets until recovery or maturity; is  
10 that correct?

11 A. Correct.

12 Q. What did the unmet margin calls leading up  
13 to the filing of the 10-K tell you about that  
14 ability?

15 A. That they did not have the ability to hold.

16 Q. Okay. Same question with respect to the  
17 default that they received on February 28.

18 A. That they did not have the ability to hold.

19 Q. And going back to that restatement where  
20 the evaluation, or whatever it was, that didn't have  
21 a date next to approved -- were you promoted after  
22 the restatement of Thornburg's financial statements?

23 A. Yes.

24 Q. What position were you promoted to?

25 A. I was promoted first to managing director,

1 and then to partner.

2 Q. And when did those promotions take place?

3 A. Managing director was two years ago and  
4 partner was last year.

5 Q. Thank you, Ms. Hall. Nothing further.

6 THE COURT: Thank you, Mr. McKenna.

7 All right, Ms. Hall. You may step down.

8 Is there any reason Ms. Hall cannot be  
9 excuse from the proceedings?

10 MR. McKENNA: There is not, Your Honor.

11 THE COURT: Mr. Lee?

12 MR. LEE: No, Your Honor.

13 THE COURT: All right. You're excused from  
14 the proceedings. Thank you for your testimony.

15 All right, Mr. McKenna. Does the SEC have  
16 its next witness or evidence? Mr. Kasper?

17 MR. KASPER: We do, Your Honor. We'd call  
18 Cynthia Reinhart.

19 CYNTHIA REINHART,  
20 after having been first duly sworn under oath,  
21 was questioned, and testified as follows:

22 THE CLERK: Please be seated. State your  
23 name for the record, please.

24 THE WITNESS: Cynthia Reinhart.

25 THE COURT: Ms. Reinhart, Mr. Kasper.

1 MR. KASPER: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. KASPER:

4 Q. Ms. Reinhart, can you tell the members of  
5 the jury where you live?

6 A. I live in Albuquerque, New Mexico.

7 Q. And how long have you lived here?

8 A. Since 1981.

9 Q. And where do you work?

10 A. I'm currently retired.

11 Q. Congratulations. And when did you retire?

12 A. September 30 of 2014.

13 Q. And prior to that, where did you work?

14 A. For KPMG.

15 Q. And how long had you worked at KPMG?

16 A. Since 1986.

17 Q. And when you retired, what was your  
18 position there?

19 A. I was the managing partner of the  
20 Albuquerque office.

21 Q. And how long had you had that position?

22 A. Since about 2001.

23 Q. And was part of your work there related to  
24 the conduct of audits of public companies?

25 A. Yes, it was.

1 Q. And do you have a rough number of how many  
2 audits you worked on in your career?

3 A. During the time that I was a partner,  
4 probably 10 to 12 a year. And so that was from about  
5 1989 till my retirement in 2014. 1998, excuse me,  
6 until my retirement in 2014. So whatever that math  
7 is.

8 Q. I won't try to do it without a calculator.  
9 And are those the number of audits that you worked on  
10 where you were the engagement partner, or is that a  
11 different number?

12 A. That's where I was the engagement partner.

13 Q. During the course of your almost 30 years,  
14 I suppose, at KPMG, did you have certain areas you  
15 specialized in?

16 A. Yes, I did.

17 Q. What were those areas?

18 A. Financial institutions, governmental  
19 entities, health care. Those were a few of the areas  
20 that I specialized.

21 Q. And by financial institution, that would  
22 include entities such as Thornburg?

23 A. Yes, banks, mortgage banks, savings and  
24 loans when they existed.

25 Q. You mentioned you retired. What are you

1 doing now?

2 A. I serve on the board of a couple of private  
3 companies as an advisory board and as a board member.  
4 I'm also still active in community organizations, as  
5 well.

6 Q. Why did you retire when you did in 2014?

7 A. KPMG has a mandatory retirement age for  
8 partners, and when I hit that retirement age, I  
9 retired in accordance with that policy.

10 Q. And did your retirement have anything to do  
11 with Thornburg or its 2007 audit?

12 A. No.

13 Q. Now, did you ever perform work for  
14 Thornburg Mortgage?

15 A. Yes.

16 Q. And what work did you work for Thornburg?

17 A. I was the engagement partner for the 2006  
18 and the 2007 audits.

19 Q. Now Ms. Reinhart, you and I have met  
20 before; right?

21 A. Yes.

22 Q. And you've met with other lawyers from the  
23 SEC?

24 A. Yes.

25 Q. And was that on more than one occasion?

1 A. Yes.

2 Q. And when we've had those meetings, did I  
3 show you some documents?

4 A. Yes.

5 Q. And I asked you some questions about what  
6 you knew relevant to your work at Thornburg?

7 A. Yes.

8 Q. And why did you agree to meet with me?

9 A. Because it was the right thing to do. You  
10 had asked, and I thought it was appropriate for me to  
11 meet with the government in connection with its case.

12 Q. And have you met with Mr. Goldstone's or  
13 Mr. Simmons' counsel in advance of trial?

14 A. No.

15 Q. Had they asked to meet with you?

16 A. Yes.

17 Q. Why didn't you meet with them?

18 A. Because in the recent past I've found that  
19 they were not forthcoming with me on certain  
20 information that would have been important to us as  
21 their auditors.

22 Q. Now, Mr. King, if you can put up Exhibit  
23 LS, please.

24 Ms. Reinhart, this is a letter from you to  
25 George Salter. Is he your lawyer?

1 A. Yes.

2 Q. And in the first sentence there, the letter  
3 from the SEC says, "This investigation has been  
4 completed as to your client, Cynthia Reinhart,  
5 against whom we do not intend to recommend any  
6 enforcement action by the Commission." Do you see  
7 that?

8 A. Yes.

9 Q. And what is the date of that letter?

10 A. May 12 of 2012.

11 Q. Now, did you testify both during the SEC's  
12 investigation into the activities at Thornburg as  
13 well as in the litigation in this case?

14 A. Yes.

15 Q. Okay. Now, in the testimony in connection  
16 with the investigation, was that before or after May  
17 15, 2012?

18 A. Before, as I recall.

19 Q. And then what about your deposition? Was  
20 it before or after May 15, 2012, the date of this  
21 letter from the SEC?

22 A. It was afterwards.

23 Q. And at the time of your investigative  
24 testimony, did you have any -- were you aware that  
25 roughly three years later you would be receiving this



1 letter from the SEC?

2 A. No.

3 Q. And how about at your deposition, at the  
4 time of your deposition, did you know that you had  
5 received this letter?

6 A. I believe my attorneys told me that they  
7 had been notified.

8 Q. And was your testimony, both in your  
9 investigative -- during the investigation which  
10 occurred prior to you receiving this letter and the  
11 deposition which occurred after it, consistent?

12 A. Yes.

13 Q. And at all times have you testified  
14 truthfully and to the best of your abilities?

15 A. Yes.

16 Q. And you're going to do that today?

17 A. Yes, I will.

18 Q. Has this letter had any impact on the  
19 testimony you offered either during the investigation  
20 or your deposition or in this court?

21 A. No.

22 Q. Now, I think you may have mentioned this,  
23 but what was KPMG's involvement with Thornburg's 2007  
24 financial statements?

25 A. KPMG was the external auditor for the

1 company in connection with the 2007 financial  
2 statements.

3 Q. Mr. King, can you bring up Exhibit 429,  
4 please?

5 Ms. Reinhart, do you recognize what this  
6 document is?

7 A. Yes.

8 Q. What is it?

9 A. It's the engagement letter that was  
10 provided to the company on June 14 of 2006.

11 Q. Okay. Now, there has been some testimony  
12 about this. I just want to draw your attention to one  
13 particular provision. If we can go to page 9,  
14 please. And if you can go to the paragraph -- I'm  
15 looking at the third paragraph from the bottom. And  
16 in that paragraph the letter states, "Thornburg  
17 Mortgage, Inc., agrees that all records,  
18 documentation, and information we request in  
19 connection with our integrated audit will be made  
20 available to us, that all material information will  
21 be disclosed to us, and that we will have the full  
22 cooperation of Thornburg Mortgage, Inc.'s personnel."  
23 Do you see that?

24 A. Yes.

25 Q. And this is part of the agreement between

1 Thornburg and KPMG in the conduct of its audit?

2 A. Yes.

3 Q. And when you refer there to "all material  
4 information will be disclosed to us," what do you  
5 understand that to mean?

6 A. It means that anything that either we  
7 request or if it is important to the conduct of our  
8 audit, it will be provided, whether in writing or  
9 orally.

10 Q. And do you understand that to be a narrow  
11 provision or a broad provision?

12 A. It's a very broad provision.

13 Q. And does it provide affirmative obligations  
14 on Thornburg to provide information?

15 A. Yes.

16 Q. And why is a provision like this included  
17 in an engagement letter?

18 A. To make sure that there is no  
19 misunderstanding about the responsibility of  
20 management with respect to the financial statements  
21 which are the -- which belong to management. The  
22 auditor is to express an opinion on the statements,  
23 but the financial statements belong to the company.

24 Q. Now, I believe you indicated that this  
25 letter was from 2006. Was there not a separate

1 letter for 2007?

2 A. There was an addendum to the 2006 letter  
3 that covered the 2007 audit.

4 Q. So all of the provisions in this letter,  
5 including the one we just looked at, were applicable  
6 to the 2007 audit?

7 A. Yes.

8 Q. Now, Ms. Reinhart, for the conduct of the  
9 2007 audit of Thornburg, can you, to the best that  
10 your memory permits, tell us who was on the team that  
11 conducted that audit?

12 A. Yes. Myself. I was lead audit engagement  
13 partner. There were two additional managers that  
14 worked for me. One was Ms. Jennifer Hall. She was a  
15 senior manager. The other was Ms. Tara Baucom.  
16 There were two senior associates, Matt Plummer and  
17 Daniel Acree. There was a staff person, Meg Jones,  
18 that also worked on the audit. There may have been  
19 some additional staff that were engaged from time to  
20 time to carry out procedures. But that was the core  
21 team.

22 And then in addition to that, there were  
23 other partners and senior managers that were  
24 involved. There was Clyde Womack, who was referred  
25 to as the SEC partner. There was Bob McLamb, who was

1 the business unit professional practice partner.  
2 There was John Taylor, who helped with what we called  
3 the in-depth review. There were some specialists,  
4 Yuval Ron, that assisted with valuation of the  
5 company's securities.

6 There was a woman, Anita Agrawal, who  
7 assisted with some of the securitization. And then  
8 there was a team that focused on some of the  
9 derivatives transactions. Enrique Tijerina was one  
10 of those individuals. So there were others outside  
11 of the Albuquerque office that participated.

12 Q. Fair to say it was a large team?

13 A. It was a large team.

14 Q. And is that unusual in any way for an audit  
15 of this kind?

16 A. No.

17 Q. And during the conduct of that audit, did  
18 certain team members work substantially out of  
19 Thornburg's offices?

20 A. Yes.

21 Q. And is that unusual for auditors to  
22 actually physically be present on a client's -- in a  
23 client's office during the conduct of an audit?

24 A. No.

25 Q. We've heard during this trial that the team

1 may have worked as many as 5,000 hours on this audit.

2 Is that possible?

3 A. Yes.

4 Q. Is that unusual in any way?

5 A. No.

6 Q. I don't know if you can see the cart over  
7 here. Let me get it over here for you. Can you see  
8 that?

9 A. Yes.

10 Q. Now, the defendants have represented that  
11 these represent some of the workpapers from that  
12 audit. You can see it's a full cart of papers. Does  
13 that surprise you in any way to see that many papers  
14 that would be workpapers prepared in the conduct of  
15 the audit?

16 A. No.

17 Q. Would it be normal for there to be  
18 workpapers in this amount during the conduct of an  
19 audit of a client such as Thornburg?

20 A. It would be normal.

21 Q. Now, we're going to talk about OTTI and  
22 going concern and some related things. But can you  
23 tell the members of the jury the other types of  
24 matters that ended up being investigated during the  
25 2007 audit?

1           A.     Yes.   There was a lot of time spent on  
2     valuing the company's securities.   The company had in  
3     some cases easy-to-price securities, but others were  
4     very difficult to price.   So we spent a lot of time  
5     working with a specialist on evaluating the company's  
6     process for valuing its investment securities.

7                 Derivative transactions were also very  
8     complex, and so we had specialists that were involved  
9     in assisting the team with the understanding of some  
10    of the application of the accounting associated with  
11    derivatives.

12                The issues that surrounded going concern  
13    which I'm sure we'll talk about -- those were also  
14    complicated.   And in addition to that, the  
15    assessments that we made related to the company's  
16    ability to hold their securities under the OTTI  
17    standards -- those were also part of what we focused  
18    our intention on.

19                Securitizations.   The company had  
20    complicated securitization transactions where they  
21    securitized loans that they either originated or  
22    acquired into investment securities and then sold,  
23    and the accounting for that was complex.   So those  
24    are some of the ones that come to mind.

25           Q.     Is it fair to say lots of issues?

1 A. Lots of issues.

2 Q. And those are all documents in the  
3 workpapers.

4 A. Yes.

5 Q. Okay. Ms. Reinhart, generally speaking,  
6 can you explain to the jury how auditors go about  
7 gathering information to conduct their audits?

8 A. When we begin the process of starting an  
9 audit, we plan that audit, and part of the planning  
10 process requires us to make some assessments about  
11 risk. The areas that are most risky are then  
12 allocated to more experienced auditors, those that  
13 are more senior in having dealt with those matters.

14 We then request information from the  
15 company in the form of schedules, and those  
16 schedules -- some of them are requested in advance,  
17 others are requested while we're in the field, and so  
18 all of the work that's performed is then gathered,  
19 assembled, and subjected to audit testwork.

20 Some of that might be a confirmation  
21 process with a third party. Others would be  
22 associated with agreeing information into the  
23 company's accounting records, like invoices from  
24 vendors and the like, looking at the details of those  
25 records.



1           And then the results of that testwork get  
2   then bound into a set of workpapers that you see  
3   here, and that forms the body of evidence that then  
4   our audit opinion is based upon.

5           Q.   And in the conduct of an audit, do you  
6   evaluate every transaction?

7           A.   No.

8           Q.   And do you have to rely on the company to  
9   bring certain information to your attention?

10          A.   Yes.

11          Q.   And are different types of information  
12   presented to the auditors in different ways?

13          A.   Yes.

14          Q.   Can you give me some examples of how  
15   different types of matters are presented to the  
16   auditors?

17          A.   Some of the more routine nature would be  
18   again pursuant to requests that we make in the way of  
19   schedules. So those would come to us. Other  
20   information we would receive directly through  
21   conversations with the company and senior  
22   representatives of the company through conversations,  
23   meetings, and the like.

24          Q.   What about if there was a significant  
25   adverse development? How would you expect that

1 information to be communicated to you?

2 A. I would expect that the company,  
3 management, would come to us and speak to us directly  
4 about those matters.

5 Q. What about between, you know, the company  
6 on the one hand and the auditors on the other? Who  
7 has more -- who knows more about the company's  
8 business?

9 A. The company.

10 Q. Was that true at Thornburg?

11 A. Yes.

12 Q. Let's talk for a moment about management  
13 integrity. Is that a concept you're familiar with?

14 A. Yes.

15 Q. Now, does an auditor's view of management  
16 integrity impact their work?

17 A. Yes.

18 Q. Is it something that is focused on during  
19 the course of the audit?

20 A. Yes.

21 Q. What, if anything, did KPMG do to satisfy  
22 itself that there are not problems with management  
23 integrity prior to accepting an audit client?

24 A. Prior to the acceptance of an audit client,  
25 we conduct a public record inquiry, background checks

1 of the senior officials of the company. We talk to  
2 their bankers, we speak with their attorneys, others  
3 that are -- that know the company in the business  
4 community. We look at information that's available  
5 in the public domain to look at the company's  
6 filings, to see what kind of matters that are out  
7 there in the open. And then we also then, during the  
8 course of the audit, continually evaluate  
9 management's integrity in terms of whether they're  
10 being truthful to us.

11 Q. And why is there this focus on management  
12 integrity during your work?

13 A. Because some of the information that's  
14 going to come to us is going to be provided orally by  
15 the company, and not just from the accounting  
16 records. And so we have to know that we can believe  
17 that information.

18 Q. Now, turning to Thornburg, were you aware,  
19 during 2007 and 2008, if Thornburg used something  
20 called repo lending?

21 A. Yes.

22 Q. I won't walk through all of that. The jury  
23 has heard plenty about that. But there were a few  
24 things I wanted to raise with you. Was the repo  
25 lending governed by written agreements?

1 A. Yes.

2 Q. Mr. King, if you can pull up Exhibit 10,  
3 please.

4 Do you recognize this document, Ms.  
5 Reinhart?

6 A. Yes.

7 Q. What do you recognize it to be?

8 A. This is the repo agreement with Citigroup  
9 and the company.

10 Q. And does this document contain the terms of  
11 Thornburg's repo lending with Citibank?

12 A. Yes.

13 Q. And did you have occasion to review this  
14 agreement during your work at Thornburg?

15 A. Yes.

16 Q. Mr. King, if you could scroll down from the  
17 first page to the last. I think what you'll see, if  
18 you can go straight down to the last page, you'll see  
19 that it reflects that it's a 41-page agreement; is  
20 that correct?

21 A. Yes.

22 Q. And is this document signed by a  
23 representative of Citibank?

24 A. Yes.

25 Q. And a representative of Thornburg?

1 A. Yes.

2 Q. Now, Ms. Reinhart, if there was some sort  
3 of modification to this agreement, is that something  
4 that you would have needed to know about in order to  
5 conduct your audit?

6 A. Yes.

7 Q. Okay. For example, if the time to meet  
8 margin calls was changed pursuant to some sort of  
9 agreement between Thornburg and Citi, would you have  
10 needed to know that?

11 A. Yes.

12 Q. Were you ever advised that there had been  
13 such a change to this agreement?

14 A. No.

15 Q. Now, did Thornburg have agreements similar  
16 to this with other lenders?

17 A. Yes.

18 Q. And did you also review those?

19 A. Yes.

20 Q. Now, in connection with your audit work, do  
21 you also know what a margin call is, as that term is  
22 used in connection with repo lending?

23 A. Yes.

24 Q. And again, I won't walk you through how  
25 that works, because I think everybody understands

1 that. There were a few things I did want to make  
2 sure were clear. If a margin call was issued to  
3 Thornburg, how long would they have to pay?

4 A. The agreement provided for settlement  
5 within the day, a day's time.

6 Q. And if a lender were to issue a margin call  
7 to Thornburg, who has the ultimate power to determine  
8 the amount of that margin call?

9 A. The lender ultimately determines the amount  
10 of the margin call.

11 Q. Under the master repurchase agreements, the  
12 documents like Exhibit 10 that we were looking at,  
13 what were the consequences to Thornburg if they  
14 didn't satisfy their margin calls on time?

15 A. Then the lender could seize the collateral  
16 and either sell it or take it for their own  
17 portfolio.

18 Q. And would the lender have to seek  
19 Thornburg's permission to do that?

20 A. No.

21 Q. It could just do it?

22 A. Yes.

23 Q. And what about -- could they declare an  
24 event of default pursuant to their repurchase  
25 agreement?

1 A. Yes.

2 Q. And if they did declare an event of  
3 default, what consequence would that have for  
4 Thornburg's other repo agreements?

5 A. There were what's referred to as  
6 cross-default provisions in those agreements. If  
7 they were to default on one, then they would be in  
8 default on others, and other of their lending  
9 arrangements, as well.

10 Q. So did I understand that right, if they  
11 defaulted on one, then their other lenders could also  
12 default them?

13 A. Potentially, yes.

14 Q. All right. Ms. Reinhart, I'd like to turn  
15 to some of the issues that arose during the 2007  
16 audit which I understand took place in early 2008; is  
17 that right?

18 A. The end of the field work took place in  
19 2008. But there were other parts of the audit that  
20 occurred during 2007.

21 Q. Now, did there come a time that you learned  
22 that Thornburg received more margin calls than usual  
23 in the latter part of February 2008?

24 A. Yes.

25 Q. And to the extent you remember, can you

1 tell the jury what you recall about that?

2 A. The company informed us that there were  
3 excessive margin calls that they were receiving  
4 outside the normal level of margin calls in  
5 connection with a segment of its portfolio that is  
6 referred to as Alt-A collateral.

7 Q. And what do you understand that to be?

8 A. It's collateral that -- it's not prime,  
9 it's not subprime. It's kind of in that intermediate  
10 classification of collateral.

11 Q. And from whom did KPMG learn that fact?

12 A. We learned it -- Ms. Hall told me about it,  
13 that it was in connection with the conversation that  
14 we were having with the company in that last time  
15 period. So I believe it came through Shawn Buniel  
16 and Mr. Simmons and Ms. Starrett.

17 Q. And did you learn that in connection  
18 with -- was there a process going on, in connection  
19 with the audit, of analyzing the company's going  
20 concern, whether or not the company was a going  
21 concern?

22 A. Yes.

23 Q. And there was sort of a memo-writing  
24 process going on both at Thornburg and at KPMG about  
25 analyzing that question?



1 A. Yes.

2 Q. And is it in connection with that is when  
3 you learned about these margin calls?

4 A. Yes.

5 Q. Okay. So the next thing I'd like to turn  
6 to is, moving a little forward in time, let's go to  
7 Exhibit 81, please.

8 Ms. Reinhart, there has been some testimony  
9 about audit committee meetings thus far. Did you  
10 attend audit committee meetings at Thornburg?

11 A. Yes.

12 Q. And looking at this document, do you  
13 recognize this to be the minutes of an audit  
14 committee meeting from February 2008?

15 A. Yes.

16 Q. And if you look there on the first line, it  
17 says, "The meeting of the audit committee of  
18 Thornburg Mortgage, Inc. was duly convened on Friday,  
19 February 22, at 3:00 p.m."; is that correct?

20 A. Yes.

21 Q. And if you look down a little further,  
22 you'll see that it indicates that you attended by  
23 telephone?

24 A. Yes.

25 Q. And is that consistent with your

1 recollection?

2 A. Yes.

3 Q. Okay. And then I'd like to draw your  
4 attention, if we go to the second page, the section  
5 entitled, "Review and approval of annual report on  
6 Form 10-K," please. Do you see that there?

7 A. Yes.

8 Q. And this reads, "Mr. Mullin asked the  
9 committee members for comments and questions on the  
10 10-K. Members of the committee suggested some  
11 language changes, asked questions, and discussed  
12 various disclosure items with management. At the  
13 conclusion of the discussion, Mr. Mullin asked if the  
14 disclosure committee had met and asked management if  
15 they were prepared to sign the certifications in the  
16 10-K, to both of which management replied in the  
17 affirmative. A motion to approve the 10-K and  
18 recommend that the audited financial statements be  
19 included in the 10-K and filed with the SEC was  
20 unanimously carried."

21 Do you see that?

22 A. Yes, I do.

23 Q. Do you recall a part of meeting that was  
24 consistent with what I just read?

25 A. Yes.

1 Q. Can you just describe what happened during  
2 that part of the meeting?

3 A. Well, as the minutes say here, the  
4 committee members were asking if there were any other  
5 revisions that needed to be made to the audited  
6 financial statements, the statements that were about  
7 to be released, in order for them to be presented  
8 fairly and accurately, and if there were any, those  
9 would be incorporated and then be ready to file. So  
10 it's part of their due diligence that they're doing  
11 as audit committee members. It's a requirement that  
12 they had to approve the filing before it was actually  
13 made with the Securities and Exchange Commission.

14 Q. And I take it this is something that's  
15 required to do as you get ready to file your Form  
16 10-K; is that right?

17 A. Yes.

18 Q. If the audit committee doesn't approve,  
19 you're not -- they won't be issued?

20 A. That's right.

21 Q. And during -- at any time during that  
22 meeting of which you were aware, was there any  
23 discussion of there being a \$196 million margin call  
24 from Citi?

25 A. No.

1 Q. So you discussed whether or not the 10-K  
2 could be filed, but nobody mentioned that there was  
3 an outstanding margin call from Citi?

4 A. That's correct.

5 Q. We'll come back to that.

6 Mr. King, let's go to Plaintiff's Exhibit  
7 106, please.

8 All right. If you would look at this  
9 document, you can see that it's an email from  
10 Ms. Starrett to Ms. Hall and you, and Mr. Simmons and  
11 others were copied on it. And the cover email says,  
12 "The draft language is attached," and then it goes on  
13 at the end of that paragraph, it concludes and says,  
14 "The amount of the margin calls is shaded because we  
15 are still working on documenting that, and we also  
16 will update the number up to the time we file." Do  
17 you see that?

18 A. Yes.

19 Q. And if you look, if you go to the second  
20 page, you see that this is some language that  
21 ultimately becomes the recent developments  
22 disclosures in the Form 10-K; is that right?

23 A. Yes.

24 Q. Okay. And as to the language we were  
25 looking at on the first page, it's making reference

1 to those disclosures on the second page; right?

2 A. Yes, it is.

3 Q. Okay. And essentially, it's saying that on  
4 the second page -- let's just go to the second page.  
5 You see it says, "Since February 14, 2008, we have  
6 met margin calls in excess of approximately \$350  
7 million"; right?

8 A. Right.

9 Q. Okay. And what the language on the first  
10 page is saying is that that \$350 million number may  
11 change. Is that what you understood?

12 A. That's what we understood, yes.

13 Q. Okay. Now, when you received this email,  
14 was it the first time you received a communication  
15 from Thornburg with these draft recent development  
16 disclosures?

17 A. Yes.

18 Q. And this document is dated February 26, at  
19 6:19 p.m. Do you see that?

20 A. Yes.

21 Q. And when did you actually end up signing  
22 your audit opinion?

23 A. Shortly after midnight on February 28th.

24 Q. So late at night the following day was when  
25 you signed?

1 A. Yes.

2 Q. Okay. Now, and when you received this  
3 document, did you understand it to be true?

4 A. Yes.

5 Q. And in doing your audit work, did you rely  
6 on it being true?

7 A. Yes.

8 Q. And as I noted at the beginning, this  
9 document identifies that it's a draft. Does the fact  
10 that it's a draft in some way allow it to not be  
11 true?

12 A. No.

13 Q. The language, "Since February 14, 2008, we  
14 have met margin calls in excess of approximately \$350  
15 million." Do you see that?

16 A. I did see it.

17 Q. We'll get that there.

18 A. It's there. I can see it now.

19 Q. Okay. Here we go. What did you understand  
20 that to mean when you received that at 6:00 on  
21 February 26?

22 A. That the company was working on documenting  
23 the actual number. This was the draft of the  
24 language that they intended to provide in the 10-K.

25 Q. And did you understand that that language

1 was true, that as of the time that you received that,  
2 on February 26, that they had, in fact, met margin  
3 calls in excess of 350 -- whatever the number turned  
4 out to be, that they had, in fact, met those margin  
5 calls?

6 A. Yes.

7 Q. And if I later show you documents showing  
8 that there were outstanding margin calls at 6:00 on  
9 February 26, would that not be true?

10 A. That would not be true.

11 Q. Now, Ms. Reinhart, I'd like to turn your  
12 attention to what I understand to be one of the  
13 accounting issues that was being dealt with at the  
14 company that's called going concern. Is that a  
15 concept you're familiar with?

16 A. Yes.

17 Q. Can you explain for the jury what it means?

18 A. Well, the condensed version, that means  
19 that a company --

20 Q. Let's stick with the condensed version.

21 A. -- wouldn't be able to meet their  
22 obligations as they would come due.

23 Q. And is that an analysis that the company  
24 and the auditors undertake?

25 A. Yes.

1 Q. And what happens if the determination is  
2 that there is some substantial concern about whether  
3 or not the company is a going concern?

4 A. If the auditors are unable to satisfy  
5 themselves that the company isn't able to continue as  
6 a going concern, then the auditor's report is  
7 modified, an explanatory paragraph is inserted into  
8 the opinion to let the users know that there is this  
9 significant uncertainty.

10 Q. You said an explanatory paragraph. And  
11 using words we might understand, what would that  
12 paragraph say?

13 A. So there would be an additional word in the  
14 auditor's report, additional wording that would say  
15 that the financial statements have been prepared on  
16 the basis that the company would continue as a going  
17 concern, but if it's not, if there is substantial  
18 doubt, then adjustments would be required and you may  
19 not be able to rely upon the fact that the company  
20 wouldn't be able to meet its obligations. So it  
21 would be a red flag to an investor.

22 Q. Is it fair to say it's a way of telling  
23 investors that there is some concern that the company  
24 might go out of business?

25 A. Yes.



1 Q. And is that something that, in amongst the  
2 world of public companies and auditors, is a pretty  
3 big deal?

4 A. Yes.

5 Q. And why is it a big deal?

6 A. Because if a company has a going concern  
7 opinion, then its lenders and investors wouldn't be  
8 very interested in continuing financial arrangements  
9 with them going forward.

10 Q. And now, thinking back specifically to  
11 Thornburg, what would have been the impact at  
12 Thornburg if there was such language put into your  
13 opinion?

14 A. They wouldn't have been able to access the  
15 capital markets to raise money in an equity offering  
16 with the Securities and Exchange Commission, and  
17 their lenders would have been concerned about  
18 continuing their borrowing arrangements, as well.

19 Q. And are both of those things things that  
20 you understood that Thornburg pretty much had to have  
21 to continue in business?

22 A. Yes.

23 Q. Now, as of what date do you make the going  
24 concern determination?

25 A. That determination is made right up to the

1 date of the report.

2 Q. And so in Thornburg's case, the report is  
3 February 28, whereas the sort of the balance sheet  
4 date was December 31. So this is a decision made not  
5 at December 31, but on February 28?

6 A. February 27 was our report date, and so  
7 that's the date that we made that determination.

8 Q. And you consider information right up until  
9 the time that you sign your opinion?

10 A. Yes.

11 Q. I want to turn now to the Thornburg going  
12 concern memo.

13 MR. KASPER: Actually, I have a binder of a  
14 handful of exhibits that I think I'd like to show the  
15 witness. If it's okay, I'll give those to her.

16 THE COURT: You may.

17 Q. (By Mr. Kasper) I'll still likely put them  
18 up on the screen, but these might be useful to you,  
19 as well.

20 Now, Mr. King, if we can turn to Exhibit  
21 240, please.

22 All right. You can look on your screen or  
23 in your binder, either one.

24 A. Okay.

25 Q. And I just want to make sure that you know

1 we're not just directing you to the wrong thing or  
2 something for some of these documents or some of the  
3 larger documents.

4 So this document is addressed to Larry  
5 Goldstone, Clay Simmons, Jane Starrett, and the file.  
6 Do you see that?

7 A. Yes.

8 Q. And it's dated January 29?

9 A. Yes.

10 Q. And do you understand that that date is  
11 correct as to the final version of this memorandum?

12 A. No, it was updated subsequent to that date.

13 Q. And looking there at the first paragraph,  
14 what do you understand Thornburg's purpose was in  
15 preparing this memo?

16 A. The purpose of the memo was to support  
17 management's assessment of the company's ability to  
18 continue as a going concern.

19 Q. And the last thing is, if you can go down  
20 to the bottom right-hand part of the page. There you  
21 go. This document has what the lawyers call a Bates  
22 number there. It begins KPMG. What do you  
23 understand that to mean?

24 A. That means it came out of our working  
25 papers on that cart.

1 Q. And the handwriting right above that -- can  
2 you explain what you understand that to mean?

3 A. There are my initials and three dates, and  
4 those are the three dates that I reviewed the memo.

5 Q. Is that part of the way that you know that  
6 there were multiple drafts of this document?

7 A. Yes.

8 Q. And were these drafts prepared after the  
9 balance sheet date and going forward up to nearly the  
10 time of filing of your audit opinion?

11 A. Yes.

12 Q. Now, Ms. Reinhart, are you aware, does this  
13 document reach a conclusion about whether or not  
14 Thornburg is a going concern as we've been talking  
15 about that term?

16 A. Yes.

17 Q. And what conclusion does it reach?

18 A. It reaches a conclusion that the company  
19 believes they will be able to continue as a going  
20 concern.

21 Q. And as part of KPMG's audit work, did you  
22 rely on that conclusion?

23 A. Yes.

24 Q. And the other documents that are contained  
25 in this document?

1 A. Yes.

2 Q. And knowing what you now, do you believe  
3 that that conclusion is correct?

4 A. No.

5 Q. We'll come back to that. 249, please.

6 Now, Ms. Reinhart, in addition to  
7 Thornburg's memo we were just looking at, did KPMG  
8 also prepare a memo addressing these issues?

9 A. Yes.

10 Q. And is that this memo?

11 A. Yes.

12 Q. And this one also has multiple dates on it.  
13 It's dated February 20, 2008; February 27, 2008; and  
14 March 2, 2008. Do you see that?

15 A. Yes.

16 Q. And does that again reflect the multiple  
17 drafts?

18 A. Yes.

19 Q. And who wrote this document?

20 A. Jennifer Hall.

21 Q. And again looking down at the bottom  
22 right-hand part of the document, do you see your  
23 initials and your handwriting there again?

24 A. Yes.

25 Q. And what does that mean?

1           A.     It means that I reviewed it on those three  
2     dates, different drafts.

3           Q.     Okay. And then if you -- looking back up  
4     to the first paragraph of the memo, or just if you  
5     recall, what is the purpose of KPMG drafting this  
6     document?

7           A.     This memo documents our consideration of  
8     the key assumptions that management made in its memo,  
9     and also audit testwork that we performed to validate  
10    some of the information that was provided by  
11    management in reaching its conclusions.

12          Q.     And can you explain to us the process for  
13    how this memo gets prepared? Who all is involved in  
14    the drafting and so on?

15          A.     The memo was initiated by Ms. Hall, and we  
16    talked about it in advance of her preparing the memo  
17    in terms of the things that we thought that it would  
18    include. She prepared the first draft. It was then  
19    subjected to a series of reviews, myself being one of  
20    them, and then several other partners that  
21    participated in the review, which included our SEC  
22    partner, our in-depth reviewing partner, and our  
23    business unit professional practice partner, Mr.  
24    McLamb. And we discussed various elements of the  
25    memo and once everyone was satisfied that their

1 questions had been answered, a final draft was then  
2 prepared and put in the workpapers, and the memo was  
3 essentially finalized then.

4 Q. So during the drafting, you send around  
5 comments to each other about what you think about  
6 various parts of the draft?

7 A. Yes.

8 Q. And then does the final draft reflect sort  
9 of everyone's views?

10 A. Yes.

11 Q. And did you approve of the final draft?

12 A. Yes.

13 Q. And did you have discussions with anyone at  
14 Thornburg, as part of reviewing this memo and  
15 preparing -- as part of reviewing the Thornburg memo  
16 and preparing the KPMG memo that we've been looking  
17 at?

18 A. Yes.

19 Q. We'll come back and talk about those. And  
20 what conclusion did KPMG reach in this memo regarding  
21 going concern?

22 A. We reached a conclusion that the company  
23 had the ability to continue as a going concern.

24 Q. And do you now believe that conclusion to  
25 be correct?

1 A. No.

2 Q. We'll come back to that, as well.

3 All right. Now I'd like to turn,  
4 Ms. Reinhart, to the other principal accounting  
5 determination we've been discussing, which is the  
6 OTTI determination. Is that something you know  
7 about?

8 A. Yes.

9 Q. And how do you know about it?

10 A. Because it is an accounting standard that  
11 is certainly one that's important in the audit of a  
12 financial institution that holds investment  
13 securities, so it's through my past experience in  
14 dealing with the issue.

15 Q. So it had come up with other clients; is  
16 that fair to say?

17 A. Yes.

18 Q. And it was also an issue at Thornburg?

19 A. Yes.

20 Q. And do you ultimately -- if you determine  
21 that certain securities have been impaired at the  
22 balance sheet date, in Thornburg's case December 31,  
23 is that when you have to conduct an OTTI  
24 determination?

25 A. Yes.



1 Q. And at what date do you reach that  
2 determination?

3 A. As of the date of the auditor's report,  
4 February 27th, 2008.

5 Q. And so you consider information all the way  
6 up to the time of filing the Form 10-K?

7 A. Yes.

8 Q. And at Thornburg, was it determined that  
9 certain assets were impaired?

10 A. Yes.

11 Q. And was an OTTI analysis performed by  
12 Thornburg?

13 A. Yes.

14 Q. And was that in the same document that we  
15 were just looking at a few moments ago?

16 A. Yes.

17 Q. And do you know, do you recall from that  
18 memorandum what the conclusion was about whether or  
19 not Thornburg had the intent and ability to hold  
20 those impaired assets?

21 A. The conclusion was that the company had the  
22 intent and ability to hold the assets through their  
23 recovery.

24 Q. Mr. King, if you can put up PX 240 and go  
25 to page 10, please.

1           And if you can look at the very first  
2 paragraph on that page. Now, if you look there at  
3 the second sentence, beginning of the second  
4 sentence, the memo -- this is Thornburg's memo --  
5 says, "As the company has the ability and intent to  
6 hold its purchased ARM assets until recovery, losses  
7 are not considered to be other than temporary  
8 impairments. The basis for the company's ability to  
9 hold these securities is predicated on its ongoing  
10 profitability, liquidity position, and ability to  
11 continue to make margin calls as discussed above."  
12 Do you see that?

13           A.    Yes.

14           Q.    And did you understand this to be  
15 Thornburg's basis for concluding that it had the  
16 intent and ability to hold its impaired assets?

17           A.    Yes.

18           Q.    And if KPMG was not provided truthful and  
19 complete information about Thornburg's ongoing  
20 profitability, would that impact KPMG's ability to  
21 adequately analyze Thornburg's OTTI conclusion?

22           A.    Yes.

23           Q.    And what if KPMG was not provided complete  
24 information about Thornburg's liquidity situation?

25           A.    The same thing. We wouldn't be able to

1 reach a conclusion, as well.

2 Q. And what if KPMG was not provided complete  
3 information about Thornburg's ability to continue to  
4 make margin calls?

5 A. The same answer. That would be important  
6 to the conclusions that we were reaching.

7 Q. And do you believe that the conclusion  
8 that's reflected here on page 10 of the Thornburg  
9 going concern memo is correct?

10 A. No.

11 Q. We'll come back to that, too.

12 Now, did KPMG also analyze the question of  
13 whether or not Thornburg's impaired assets were other  
14 than temporarily impaired?

15 A. Yes.

16 Q. And does that take place in the Thornburg  
17 going concern memo we were looking at?

18 A. It's documented in both memos. We look at  
19 the company's memo, but then we have our separate  
20 independent memo that evaluates our assessment and  
21 comes to a conclusion about that.

22 Q. In doing that analysis, can KPMG rely on  
23 Thornburg's conclusion that we just looked at?

24 A. Yes.

25 Q. And what did KPMG conclude in its

1 memorandum?

2 A. We concluded that the company didn't have  
3 permanent impairment. So the impairments that they  
4 had on their securities were not considered to be  
5 other than temporarily impaired.

6 Q. Okay. Now, before we move away from OTTI  
7 for a minute, I want to ask you, do you know who  
8 James Kroeker is?

9 A. No, I don't recognize that name.

10 Q. Do you know who Rachel Mincin is?

11 A. No.

12 Q. Did anyone at Thornburg ever mention them  
13 to you, in your recollection?

14 A. No.

15 Q. Did anybody ever tell that you they were  
16 relying on what Mr. Kroeker and Ms. Mincin thought  
17 about OTTI in reaching their OTTI determinations?

18 A. No.

19 Q. We've talked about this a little bit. I  
20 want to make sure I'm clear. What I want to talk to  
21 you about is what information you consider in  
22 reaching the going concern and OTTI determinations.  
23 I'm sorry, in reaching the OTTI determinations. So  
24 my first question is: In conducting the OTTI  
25 analysis, you considered information after the

1 balance sheet date, which, in Thornburg's case, was  
2 December 31?

3 A. Yes.

4 Q. So let's take a look at Plaintiff's Exhibit  
5 240, which was Thornburg's going concern memo.

6 And Mr. King, if you could put up the  
7 bottom half of page 2, please.

8 So this is Thornburg's consideration of  
9 its -- of the memorandum in which they made an OTTI  
10 determination; correct?

11 A. Yes.

12 Q. And can you tell me -- and there is this  
13 table. Do you see the table there, table 1?

14 A. Yes.

15 Q. And it's entitled "Detailed historical  
16 spread for 2007 and January 2008"?

17 A. Yes.

18 Q. And it lists certain spread information,  
19 whatever that is, and can you tell me what time  
20 periods it considers?

21 A. It considers all the quarters of 2007 and  
22 the first month of January 2008.

23 Q. So this would be an example of Thornburg  
24 explicitly considering information that occurred  
25 after the balance sheet date in connection with

1 reaching its OTTI determination?

2 A. Yes.

3 Q. And just to look at one other example,  
4 let's go to page 4 of 15, please.

5 THE COURT: Mr. Kasper, when you find a  
6 good breaking point --

7 MR. KASPER: Just one moment and I will.

8 THE COURT: Certainly.

9 Q. (By Mr. Kasper) And looking here, can we  
10 blow up the first paragraph of page 4 of 15, please?  
11 And if you look there, in the second sentence it  
12 says, "For now, CP" -- and that refers to commercial  
13 paper; correct?

14 A. Yes.

15 Q. "For now, CP is nearly nonexistent in the  
16 marketplace for MBS products. The company does not  
17 expect that borrowing from CP facility will be  
18 available in the near future, and has not planned on  
19 gaining access to that financing for 2008. As such,  
20 of the \$400 million in CP financing at year end, \$100  
21 million matured in January 2008 and was placed on  
22 repo, and the remaining \$300 million will mature by  
23 the end of February 2008." Do you see that?

24 A. Yes.

25 Q. Is that another example of Thornburg

1 explicitly considering the events of January and  
2 February 2008 in connection with reaching its OTTI  
3 determination?

4 A. Yes.

5 Q. Okay. Let's take our break.

6 THE COURT: All right. We'll be in recess  
7 for about 15 minutes.

8 (The jury left the courtroom.)

9 THE COURT: All right. Anything you need  
10 to discuss?

11 MR. McKENNA: No, Your Honor.

12 THE COURT: Mr. Lee?

13 MR. LEE: No, Your Honor.

14 THE COURT: All right. We'll be in recess  
15 for a few minutes.

16 (The Court stood in recess.)

17 (The jury entered the courtroom.)

18 THE COURT: All right, Ms. Reinhart, I'll  
19 remind you that you're still under oath.

20 Mr. Kasper, if you wish to continue your  
21 direct examination of Ms. Reinhart, you may do so at  
22 this time.

23 MR. KASPER: Thank you, Your Honor.

24 THE COURT: Mr. Kasper.

25 Q. (By Mr. Kasper) Ms. Reinhart, what does it

1 mean to tie-out a Form 10-K?

2 A. It means that the auditors take the Form  
3 10-K and agree the amounts to underlying information  
4 that's in the workpaper files that you see there.

5 Q. When you say the amounts, what are you  
6 referring to?

7 A. It might be any numbers that are in there,  
8 the balance sheet information, the income statement  
9 information, the footnote detail information that's  
10 contained in management's discussion and analysis,  
11 things of that nature.

12 Q. Lots of numbers in a 10-K?

13 A. Lots of numbers in a Form 10-K.

14 Q. It's a big job?

15 A. It's a big job.

16 Q. Let's take a look at Exhibit DL, please.

17 Do you recognize this document, Ms.

18 Reinhart?

19 A. Yes.

20 Q. What do you recognize this to be?

21 A. This is the version of the Form 10-K that  
22 was filed with the SEC. We call it the EDGARized  
23 version.

24 Q. And is this the document from KPMG's  
25 workpapers?



1 A. Yes.

2 Q. And Mr. King, if you can highlight the  
3 handwritten note there in the middle of the page.

4 Do you see that, Ms. Reinhart?

5 A. Yes.

6 Q. And what does that note tell you about what  
7 this document is?

8 A. It says here that -- take a look at another  
9 10-K that's at GB-H-3, so the majority of the tie-out  
10 is contained there, and if there is anything that's  
11 been added since then, it's contained in this  
12 version.

13 Q. And when is the EDGARized version of the  
14 document prepared?

15 A. It's pulled down from the SEC website after  
16 the filing.

17 Q. It's late in the process?

18 A. Yes, it's very late in the process.

19 Q. So by virtue of the fact this is the  
20 EDGARized version, I'm just trying to determine if we  
21 can conclude when you might have received this.

22 A. It would have been after the filing, the  
23 28th of February 2008, potentially. We put it in the  
24 file, as I recall, on March 3, 2008.

25 Q. If you'd like to look at your handwritten

1 notes down at the bottom of the page. And what does  
2 that indicate to you?

3 A. That indicates that we pulled it down on  
4 March 3, as you can see the typed date there on the  
5 right, and that I signed off on it on March 3 of  
6 2008.

7 Q. Okay. And so that note revealed that there  
8 is some other document that ties out many of the  
9 numbers in the 10-K, but there are -- some of the  
10 numbers are tied out in this document; is that right?

11 A. Yes.

12 Q. All right. If you can turn to the pages  
13 that are Bates-stamped 52, 53 and 54, and this is one  
14 that's in your binder and may be helpful to you to  
15 look at in your binder.

16 A. Which tab is this one?

17 Q. It's DL. And I want to start off by asking  
18 if you could take a look at pages 52, 53, 54 -- the  
19 jury has seen these pages many times now -- and just  
20 ask you if you know the circumstances under which  
21 those documents were provided to KPMG.

22 A. My understanding is, these were provided to  
23 us as a tie-out for the footnote disclosure in the  
24 subsequent events.

25 Q. Is that the \$300 million worth of margin

1 call number that we've talked about, or that's been  
2 discussed?

3 A. Yes.

4 Q. Do you know if these pages were provided  
5 together or they came separately? Or do you not  
6 know?

7 A. I do not know.

8 Q. And do you know if you reviewed them prior  
9 to filing the Form 10-K?

10 A. I don't believe I did.

11 Q. And is that informed by the note you saw on  
12 the front page of the Form 10-K?

13 A. Yes.

14 Q. Now, these three pages -- were they  
15 provided to KPMG in connection with the going concern  
16 analysis we were discussing before the break?

17 A. No.

18 Q. And if they were provided in connection  
19 with that, would it have been analyzed and  
20 memorialized and reflected in those going concern  
21 memos?

22 A. Yes, it would have been included.

23 Q. And was this document provided to KPMG, to  
24 your knowledge, in any way in connection with the  
25 OTTI analysis?

1 A. No.

2 Q. For what purpose did KPMG gather these  
3 documents and review them?

4 A. They were gathered to support the footnote  
5 disclosure called the subsequent events footnote in  
6 the audited financial statements.

7 Q. Do you know if this was one of the last  
8 things that KPMG received prior to signing the audit  
9 opinion?

10 A. Yes.

11 Q. Now, if you assume that you can discern  
12 from these three documents that Thornburg did not pay  
13 its margin calls on a single day, do you believe that  
14 this would constitute appropriate communication of  
15 that fact?

16 A. No.

17 Q. How would you expect that fact to be  
18 communicated to yourself and the KPMG audit team?

19 A. We would expect senior management to come  
20 to me or Ms. Hall and talk to us about the  
21 circumstances around the margin calls.

22 Q. Would you expect that it would have been  
23 incorporated and analyzed into their going concern  
24 memo?

25 A. Yes.

1 Q. Would you have expected it would have been  
2 given prior to the last day before you signed your  
3 audit opinion?

4 A. Yes.

5 Q. You can set that one aside.

6 I've been trying to move forward in time  
7 from when you learned about these additional margin  
8 calls up through the audit committee meeting and the  
9 recent developments language and some of the other  
10 events we've talked about. And so now we're getting  
11 to the point where I think it's about time that KPMG  
12 is going to sign its audit opinion.

13 But before we talk about your audit opinion  
14 and your signing on February 27, I want to show you  
15 some things to see if you were aware of them at the  
16 time that you did sign that audit opinion. So the  
17 first thing I'd like to show you is Plaintiff's  
18 Exhibit 81, and you'll recognize that this is the  
19 audit committee minutes that we were looking at  
20 before. And we talked about these before, that they  
21 indicated that the meeting began at 3:00 p.m. But  
22 the first thing that happened, if we go to the top of  
23 the second page, Mr. King, is that there was an  
24 executive session. Do you recall if you were  
25 included in that executive session?

1 A. I don't believe I was, no.

2 Q. And in the middle of that paragraph there,  
3 it says, "Mr. Simmons advised the committee that the  
4 company had received a large margin call from Citi.  
5 He said that the company had worked out a schedule  
6 with Citi to meet the requirement and anticipated  
7 fully meeting it and any other liquidity requirements  
8 by the time the 10-K is filed." Were you told that  
9 during that meeting?

10 A. No.

11 Q. Were you told that information prior to the  
12 time that you signed your audit opinion?

13 A. No.

14 Q. Would that have been important information  
15 for you have prior to signing the audit opinion?

16 A. Yes.

17 Q. And why would that information have been  
18 important to you?

19 A. Because it was critical information related  
20 to the company's liquidity struggles at that  
21 particular point in time.

22 Q. Now, let's take a look at Plaintiff's  
23 Exhibit 58, please. So that related to the Citi  
24 margin call. This document relates to a margin call  
25 from Credit Suisse. If you look at this document,

1 it's dated February 20, and it's from someone  
2 named -- and I'm looking at the second email -- it's  
3 from someone named Tanya Miller, if you can go  
4 through the entire email including the signature  
5 block. It's from Ms. Tanya Miller to Digna Rivera,  
6 and it says, "Regards Tanya R. Ferrier, Credit  
7 Suisse." Let me draw your attention to this. It  
8 says, "Thornburg remains in call for," and there's  
9 three rows of information there.

10 Can you look at that and tell me what you  
11 understand that to communicate?

12 A. It's communicating, the first line, that  
13 there is \$50 million that's outstanding and hasn't  
14 been satisfied for two days. There is a \$9.5 million  
15 that's outstanding for one day. Then there is a  
16 \$16.7 million call that is a new call, for a total of  
17 \$76.6 million.

18 Q. And did you receive this document prior to  
19 the time that KPMG signed this audit opinion?

20 A. No.

21 Q. And do you believe it would have been  
22 important for you to receive this document?

23 A. Yes.

24 Q. Were you otherwise provided this  
25 information about these outstanding margin calls?

1 A. No.

2 Q. All right. Let's take -- I want to draw  
3 your attention now to some additional emails that I'm  
4 going to show you that are a series of emails that  
5 Mr. Goldstone wrote to the board of directors of  
6 Thornburg. The first one is Plaintiff's Exhibit 45,  
7 if we could put that on the screen, Mr. King.

8 And you'll see that this is an email from  
9 Larry Goldstone to the board of directors, and copies  
10 Mr. Simmons there. And you see it's sent February  
11 15, 2008, at 4:44 p.m. Do you see that?

12 A. Yes.

13 Q. And drawing your attention to the first  
14 paragraph, he says -- Mr. Goldstone writes,  
15 "Beginning today, we are going to try a new  
16 management communication process with the board in  
17 order to facilitate better communication of  
18 information in a more timely and consistent fashion  
19 than may have been true in the past. Each Friday,  
20 Clay, Paul, and I will collaborate on a weekly  
21 summation of various subjects, including financing,  
22 liquidity, mortgage spreads, origination activity,  
23 capital raising, and anything else that we think may  
24 be of interest."

25 So my question is: Did you see this? Were



1 you provided this document prior to the time that  
2 KPMG signed its audit opinion?

3 A. No.

4 Q. Were you told that Mr. Goldstone and Mr.  
5 Simmons had begun a new process of communicating  
6 information about liquidity and financing and  
7 origination activity and capital raising to the board  
8 of directors?

9 A. No.

10 Q. Now I'd like to draw your attention to some  
11 of the items in this email. If we look at the next  
12 paragraph from the one I was reading from, the second  
13 sentence there says, "Over the past several weeks the  
14 mortgage market has once again developed an  
15 increasingly negative tone." Is that information  
16 that was communicated to you by Mr. Goldstone?

17 A. No.

18 Q. And if you look further down in that  
19 paragraph it says, "This morning we received a  
20 surprising number of margin calls in the amount of  
21 \$113 million," and then further down it says,  
22 "Fortunately, we were able to meet or negotiate a way  
23 to meet all of those margin calls."

24 And then if we look down to the second  
25 page, the last paragraph prior to the closing, Mr.

1 Goldstone wrote, "That is it for now. Markets remain  
2 difficult and we are working diligently to continue  
3 to do what we need to do to get through it." Do you  
4 see that?

5 A. No. That must be the next --

6 Q. The next paragraph?

7 A. -- paragraph. Yes, I see that now.

8 Q. And again, was this a document that was  
9 given to you prior to the time that you completed  
10 your audit opinion?

11 A. No.

12 Q. And do you believe this would have been  
13 important information to have?

14 A. Yes.

15 Q. And why would this information have been  
16 important to you?

17 A. Well, because, again, it conveys the  
18 difficulty that the company was facing at that time  
19 in meeting margin calls, and also that they weren't  
20 meeting margin calls on a daily basis, which is not  
21 consistent with what they were telling us.

22 Q. And why would it be important if they were  
23 not meeting margin calls on a daily basis?

24 A. Because the terms of the reverse repurchase  
25 agreements required that they meet them and it would

1 be contradictory to the OTTI assertion at least that  
2 the company was making to us at that time.

3 Q. Okay. Mr. King, if we can put up  
4 Plaintiff's Exhibit 62. And that prior document was  
5 from February 15, and this next one is from February  
6 21. And again, it's from Mr. Goldstone to members of  
7 the board and it copies Mr. Simmons.

8 I won't walk through all of this, but I  
9 want to just point to, I guess, right there, the last  
10 sentence in the paragraph begins, "We plan to meet  
11 this call with the following strategies," and it  
12 lists eight different things about how they're going  
13 to meet a margin call from Citi. Is that information  
14 that was provided to you during the course of your  
15 audit work?

16 A. No.

17 Q. Is that information that would have been  
18 important for you to see?

19 A. Yes.

20 Q. Let's take a look at Plaintiff's Exhibit  
21 85. This is from the next day, February 22. Mr.  
22 Goldstone sends yet another email to his board of  
23 directors. And Mr. Goldstone writes, "Here is a  
24 recap of yesterday's events regarding margin calls  
25 and our progress in developing and executing plans

1 and strategies to meet them."

2 In the next paragraph he said, "We did  
3 receive some additional margin calls yesterday," and  
4 then prior to the numbered paragraph, the paragraph  
5 that has numbers in it, he says, "The highlights from  
6 yesterday are as follows," and he lists a whole  
7 variety of things.

8 Was that information that was provided to  
9 you prior to the time that you reached your audit  
10 conclusion?

11 A. No.

12 Q. And would it have been helpful to you to  
13 have seen Mr. Goldstone's email to the board  
14 describing these activities at that time?

15 A. Yes.

16 Q. Would it have been important to you to see  
17 this information?

18 A. Yes.

19 Q. Let's take a look at Plaintiff's Exhibit  
20 95. This is from February 25, another email from Mr.  
21 Goldstone to the board. And again he's discussing --  
22 in the first paragraph he says, "We were able to send  
23 Citibank \$60 million and Greenwich \$20 million for  
24 net reduction of \$80 million in margin call."

25 Then a couple sentences down he says, "We

1 believe we owe Citi just under \$100 million today."

2 And then he goes on to talk about the  
3 timing of the filing of the 10-K. Again, was this  
4 information that was provided to you prior to the  
5 time that you filed your audit opinion?

6 A. No.

7 Q. And would it have been important to you?

8 A. Yes.

9 Q. Now, Ms. Reinhart, before going to the next  
10 category of documents that I think you haven't seen,  
11 Mr. Lee, one of the lawyers for the defendants, asked  
12 your partner, Bob McLamb, some questions during his  
13 testimony suggesting that Mr. McLamb should have  
14 talked to the authors of the documents or read  
15 transcripts or something like that before he  
16 testified to the jury. I have a couple of questions  
17 about that assertion. First, do you need any help  
18 understanding Mr. Goldstone's words in these emails?

19 A. No.

20 Q. And as an auditor with almost 30 years of  
21 experience, what do you think is a more reliable  
22 source of information? The words of the documents  
23 written in 2008 or what the defendants on trial say  
24 they mean?

25 A. As they were written in 2008.

1 Q. All right. Thank you. Mr. King, let's put  
2 up Plaintiff's Exhibit 88, please, and go to the  
3 second page of that document. Now, if you can put up  
4 the whole body of the letter, please.

5 This is a February 21 letter from Citi to  
6 Thornburg Mortgage. You can see the attention line  
7 is Larry Goldstone and Clay Simmons and Nate Fellers.  
8 And it says it's regarding the global master  
9 securities lending treatment dated as of September  
10 20, 2007. Do you understand that to be the document  
11 that we looked at before the break?

12 A. Yes.

13 Q. And in the first paragraph it closes by  
14 saying, "As a result of the breach in accordance with  
15 paragraph 14.1(ii) of the agreement, Citi now has the  
16 right to declare an event of default to have  
17 occurred." Do you see that?

18 A. Yes.

19 Q. Can you tell me what you understand that to  
20 mean?

21 A. It means that because the company hasn't  
22 met the margin calls in accordance with the terms of  
23 the agreement, settling on a daily basis, Citi has  
24 the right to accelerate and either seize the  
25 securities or sell the securities.

1 Q. And did Citi need to seek Thornburg's  
2 permission to do those things?

3 A. No.

4 Q. Now, during -- prior to the time that you  
5 signed your audit opinion, were you told that  
6 Thornburg had received this letter?

7 A. No.

8 Q. Again going back to Mr. Lee's questions to  
9 Mr. McLamb about talking to the authors of the  
10 documents before you received them, and so forth, is  
11 there anything that Mr. Simmons or Mr. Goldstone  
12 could say to you to explain their failure to provide  
13 this document prior to the time of your signing the  
14 audit opinion?

15 A. No.

16 Q. Do you believe this is something that would  
17 have been important for you to see?

18 A. Yes.

19 Q. How would it have affected your work on the  
20 audit?

21 A. It would have been both important to our  
22 conclusions about the company's ability to continue  
23 as a going concern, and their ability to hold their  
24 securities until recovery under the OTTI analysis.

25 Q. Did you ever ask for this, for documents of

1 this type from Thornburg?

2 A. Yes.

3 Q. And was it given to you in response to that  
4 request?

5 A. No.

6 Q. All right. We'll look at that a little bit  
7 later.

8 Let's go to Plaintiff's Exhibit 75, please.  
9 Now, if we can go to the second page first, Mr. King.  
10 The third page. Thank you.

11 Ms. Reinhart, do you recognize the form of  
12 this document?

13 A. Yes.

14 Q. And what do you recognize it to be?

15 A. This is the company's cash liquidity  
16 report, the 45-day liquidity report that they  
17 developed in early 2008.

18 Q. And do you have an understanding of how  
19 often these documents were prepared?

20 A. Yes.

21 Q. How often were they prepared?

22 A. My understanding, they were prepared on a  
23 daily basis.

24 Q. So there was a new one for every day?

25 A. Yes.



1 Q. And this one, if we can look on the  
2 right-hand side, if we can see the date one, I  
3 believe this one is dated February 21. The top  
4 right-hand side, Mr. King.

5 Do you see that?

6 A. Yes.

7 Q. And if we can look at the date on the left  
8 and compare that to the cash balance on the right, I  
9 want to ask, do you have an understanding of whether  
10 or not you saw this particular daily liquidity  
11 report?

12 A. No, I did not see this one.

13 Q. I mean, they all look roughly the same.  
14 How can you be so certain that you didn't see this  
15 particular one?

16 A. Because I would have recalled it, because  
17 every day of the period shows a negative cash  
18 balance.

19 Q. And why would that be significant?

20 A. Because it was inconsistent with the  
21 company's assertion that they were going to be able  
22 to generate enough liquidity in the foreseeable time  
23 period to meet their obligations as they came due,  
24 and this shows that they're out of cash.

25 Q. And Mr. King, if you could show the Bates

1 number on this to remind -- and to see where this  
2 document came from.

3 Do you understand what that Bates number  
4 refers to?

5 A. Yes.

6 Q. What does that indicate to you?

7 A. That indicates that it came through the SEC  
8 investigation.

9 Q. From the files of Thornburg?

10 A. Yes, from Thornburg to the SEC.

11 Q. Now if we can go back to that first thing,  
12 Mr. King, that would be helpful. Now, if you can  
13 show the whole email, please.

14 Did you see emails in this form that, you  
15 know, accompanied the liquidity reports during the  
16 audit?

17 A. I don't recall seeing an email that would  
18 accompany the report.

19 Q. Now, Mr. King, if we can call up Exhibit GE  
20 briefly, and again, if we can start at the top  
21 right-hand corner, we can see the date of this  
22 document.

23 Do you see that this one is also dated  
24 February 21?

25 A. Yes.

1 Q. And Mr. King, if you could do the analysis  
2 you've done before to compare the right-hand column  
3 with the left-hand column, please.

4 Do you see a difference between the  
5 document we looked at previously, also dated February  
6 21, and this one?

7 A. Yes.

8 Q. And what's the difference?

9 A. This one shows that for each day in the  
10 period being forecasted, there is a positive cash  
11 balance.

12 Q. Is it possible that you saw this document?

13 A. It is possible I saw this one, yes.

14 Q. Let's take a look at some documents from  
15 February 27. The first one I'd like to show you is  
16 Plaintiff's Exhibit 113. Now, Ms. Reinhart, this is  
17 an email from Mr. Simmons to Mr. Feldman and Mr.  
18 Goldstone. I want to focus on the second email from  
19 Mr. Feldman to Mr. Goldstone and Mr. Simmons. And in  
20 particular, I want to draw your attention to the  
21 second paragraph. Mr. Feldman writes, "Further, I  
22 spoke with Charles Mac and he made it sound like a  
23 large repo client, European, lots of pay option MTA,  
24 was collapsing. He couldn't give me details other  
25 than they own billions that presumably would have to

1 get sold. He may be able to give more details later  
2 today. He sounded very concerned about it."

3 Were you provided this email during the  
4 course of your audit work?

5 A. No.

6 Q. Would it have been important for you to  
7 have been provided this document?

8 A. Yes.

9 Q. Can you tell me why you believe it would  
10 have been important to you?

11 A. This would have been important to  
12 understanding the environment which the company  
13 faced. They had indicated to us that the market was  
14 stabilizing, and this would indicate that it was not  
15 stabilizing.

16 Q. Now, if we can look at that first email  
17 from Mr. Simmons, you see that Mr. Simmons writes,  
18 "This makes it even more critical to be done with  
19 Citi today so we can get the K filed." Do you see  
20 that?

21 A. Yes.

22 Q. Did Mr. Simmons ever communicate to you  
23 that he was concerned about market events such that  
24 he wanted to get the K filed?

25 A. No.

1 Q. And when he says "critical to be done with  
2 Citi today," what do you understand that to mean?

3 A. I can only surmise that it would mean that  
4 he has to satisfy all of the remaining balance with  
5 Citi that's outstanding, that has been outstanding  
6 for a period of days, so that they can make the  
7 statement that all margin calls have been met.

8 Q. And if we look at the top of this document,  
9 we can see that it's from 8:08 a.m. on the 27th.

10 Mr. King, let's go to Plaintiff's Exhibit  
11 116, please. And pull that up.

12 I'll tell you this is an email from Mr.  
13 Simmons to Ms. Starrett and copying Ms. Jacquez, and  
14 it's dated that same day, and the time on that  
15 document is 10:35 a.m. Mr. Simmons writes, "I gave  
16 Francine a 6:00 a.m. Thursday morning deadline to  
17 file the K. I do not want there to be any issues  
18 based on Thursday activity."

19 Did Mr. Simmons tell you prior to the time  
20 that KPMG signed its audit opinion that he wanted to  
21 file the K before Thursday activities?

22 A. No.

23 Q. Did Mr. Simmons communicate in any way that  
24 he had any concerns about what was going to happen in  
25 the market on Thursday?

1 A. No.

2 Q. And the last document related to this, I  
3 want to look at Plaintiff's Exhibit 122. This is an  
4 email from Mr. Goldstone to Mr. Simmons. And in the  
5 second paragraph Mr. Goldstone writes, "Also, you  
6 should know that a large Alt-A hedge fund in Europe  
7 is blowing up this afternoon. UBS Credit just  
8 mentioned it to me. They got hit with 20-point  
9 haircuts on Alt-A AAAs overnight. I think we will  
10 get this a little more gradually, but we should be  
11 ready for it." Do you see that?

12 A. Yes.

13 Q. And what do you understand Mr. Goldstone to  
14 be communicating to Mr. Simmons, the chief financial  
15 officer?

16 A. As we came to find out, that this large  
17 hedge fund, which was Peloton, was collapsing at that  
18 particular point in time, and so he was concerned  
19 that the market was, in fact, very unstable, and he's  
20 telling Mr. Simmons about that fact.

21 Q. And so Mr. Goldstone took time out of his  
22 day to convey that to Mr. Simmons. Did he take time  
23 out of his day to convey that to you?

24 A. No.

25 Q. To anyone else on the KPMG audit team?

1 A. No.

2 Q. Would you expect, if he had this  
3 information, that he would have let you know?

4 A. Yes.

5 Q. And would this have been important  
6 information for you to have in connection with your  
7 audit?

8 A. Yes.

9 Q. Now let's take a look at Plaintiff's  
10 Exhibit 94. I want to focus on the second email  
11 again, Mr. King, the email from Ms. Starrett.

12 This is an email from Ms. Starrett to Mr.  
13 Goldstone and Mr. Simmons. And in the second  
14 paragraph she writes, "We have purposely not told  
15 them about the margin calls." And can you tell from  
16 the context there who the "them" is?

17 A. That's KPMG.

18 Q. "We have purposely not told them about the  
19 margin calls, so that we don't escalate an issue  
20 which we believe will be put to rest by the time they  
21 have to issue their opinion. They have not raised  
22 the issue of selling assets or marking down any  
23 assets. Rather, we have been wary of selling assets  
24 because we feel it is likely that the issue will be  
25 raised and it is also likely they will need to

1 involve other experts within the firm, all of which  
2 will make reaching a decision a slow process. So  
3 since we believe the situation will be resolved  
4 before they may have to opine, we have chosen not to  
5 put the valuation issue in front of them. Obviously,  
6 if we are not able to resolve the situation  
7 satisfactorily, we will need to inform them before we  
8 file."

9 Were you provided this email prior to the  
10 time that you reached your audit opinion?

11 A. No.

12 Q. And is it your understanding that it's  
13 appropriate for audit clients to purposely not tell  
14 their auditors information?

15 A. It's not appropriate for that to happen.

16 Q. And why is that not appropriate?

17 A. Because management is responsible for their  
18 financial statements, and they are responsible for  
19 informing the auditors of all significant matters  
20 that would have an impact on those financial  
21 statements.

22 Q. Is that true even if it's an issue that  
23 they don't want to escalate and which they believe  
24 will be put to rest by the time they have to issue  
25 their opinion?



1           A.     They still have an affirmative  
2     responsibility to communicate with the auditors about  
3     matters of significance.

4           Q.     Even if it's going to make the process of  
5     reaching a decision a slow process, as Ms. Starrett  
6     writes?

7           A.     The audit process can sometimes be slow,  
8     but it's supposed to be slow and careful.

9           Q.     And why is it supposed to be slow and  
10    careful?

11          A.     Because you don't want to issue an opinion  
12    that's incorrect that investors would rely upon.

13          Q.     All right. And I just want to ask you to  
14    look at one other paragraph, which is the next  
15    paragraph, where Ms. Starrett writes, "In short,  
16    selling some assets is substantially the same as  
17    selling all assets, because the only reason we don't  
18    have to recognize the impairments on all assets with  
19    negative marks in income now is that we represent we  
20    have the intent and ability to hold the assets to  
21    maturity. Selling some assets calls into question  
22    our intent and having to sell them to meet margin  
23    calls or reduce exposure calls into question our  
24    ability to hold them."

25                 What do you understand Ms. Starrett to be

1 communicating to Mr. Goldstone and Mr. Simmons?

2 A. That she is essentially saying here that  
3 they've made the assertion to us that they intend to  
4 hold those securities that are underwater, and if  
5 they were to sell any of those securities, it would  
6 trigger questions about their ability and intent to  
7 hold them and then cause the negative marks, as she  
8 calls it, which is the difference between fair value  
9 and carrying amount, to be recorded in the income  
10 statement.

11 Q. Is it fair to say that this is  
12 Ms. Starrett's summarization of the applicable OTTI  
13 accounting rules?

14 A. Yes.

15 Q. And do you believe this to be a correct  
16 summary of the applicable accounting rules?

17 A. Yes, I do.

18 Q. Mr. King, can we go to Exhibit 69, please?

19 Now, Ms. Reinhart, this is an email from  
20 Deborah Burns and its subject line is "TMST 2008-1  
21 update." Do you know what TMST 2008-1 refers to?

22 A. That's a securitization transaction the  
23 company was in the process of putting together in the  
24 late February time period.

25 Q. Were you provided this email in connection

1 with your audit work?

2 A. No.

3 Q. Now, Ms. Burns writes, she begins, "We have  
4 a shot at upsizing the deal to \$1 billion." Do you  
5 see that?

6 A. Yes.

7 Q. Then in the next paragraph she says, "So  
8 the language in the red needs to satisfy the  
9 underwriters today and next week or the trade will be  
10 at risk. The tricky part is the disclosure around  
11 margin calls and liquidity." Do you see that  
12 paragraph?

13 A. Yes.

14 Q. Now, what do you understand Ms. Burns to be  
15 communicating to Mr. Goldstone and Mr. Simmons and  
16 Ms. Starrett?

17 A. So effectively saying here that the draft,  
18 which is the red, needs to have all the disclosures  
19 in it; otherwise, they won't be able to go forward.

20 Q. And if you look at the next sentence, it  
21 says "CSFB" and this refers to Credit Suisse?

22 A. Yes.

23 Q. "CSFB is willing to withdraw from the  
24 underwriting group since they realize their attorneys  
25 will probably not agree to anything short of

1 disclosing the delay in meeting their margin call  
2 earlier this week." What do you understand Ms. Burns  
3 to be saying there?

4 A. She's effectively saying that CFSB doesn't  
5 want to be involved with it because they know that  
6 they haven't had their margin call satisfied, so they  
7 don't want to go forward with an underwriting that  
8 they're attached to or associated with, knowing that  
9 the disclosures are incomplete.

10 Q. And is this information that would have  
11 been important for you to have during the time that  
12 you were performing your audit work?

13 A. Yes.

14 Q. And why would this have been important?

15 A. Because we were not aware that they were  
16 delaying the underwriting because they didn't want to  
17 disclose the company's inability to meet their margin  
18 calls.

19 Q. Let's take a look at Plaintiff's Exhibit 85  
20 which also addresses that issue, and you'll recognize  
21 that this is one of the Mr. Goldstone's emails to the  
22 board that you previously testified was not provided  
23 to you.

24 In the first numbered paragraph, paragraph  
25 number 1, Mr. Goldstone advises the board, "We

1 postponed our February securitization." And you  
2 understand that to be referring to the TMST 2008-1?

3 A. Yes.

4 Q. Okay. "We postponed our February  
5 securitization transaction because of prosup  
6 disclosure issues around these margin calls. We  
7 don't want to disclose our current circumstance until  
8 it is resolved."

9 And then later on he says, "Further, some  
10 of the lawyers wanted us to do that, so we put the  
11 transaction on hold and will resurrect the deal next  
12 week at some point."

13 Were you told this information prior to the  
14 time that KPMG issued its audit opinion?

15 A. No.

16 Q. And based on your familiarity with how the  
17 company worked, was it their normal practice to  
18 postpone securitizations to avoid making disclosures?

19 A. That was not a normal practice.

20 Q. And would it be important for you to have  
21 known that they were now doing just that?

22 A. Yes.

23 Q. And why would that have been important?

24 A. Again, because it would put in context the  
25 degree of the struggle that the company was having at

1 that particular point in time when we, as their  
2 auditors, were reaching very critical decisions about  
3 going concern and OTTI.

4 Q. Now, the last email -- this is PX 90,  
5 Mr. King.

6 And you'll see that this refers to TMST  
7 2008-1, and you'll see the first email is from  
8 Ms. Burns to Eric Smith and a  
9 JamesBuccola@CreditSuisse.com, and the subject line  
10 is "Investor explanation for postponement."

11 And Ms. Burns writes, "The company is in  
12 the process of finalizing its Form 10-K for fiscal  
13 year 2007, which it plans to file late next week. As  
14 is always the case, the company endeavors to make  
15 sure all public disclosures are consistent and  
16 accurate. As a result of changing market conditions,  
17 we have been working on our disclosure.  
18 Unfortunately, we were unable to coordinate the  
19 disclosure for the TMST 2008-1 prospectus and the  
20 Form 10-K filing in time for the scheduled pricing,  
21 and have decided to postpone pricing until we can do  
22 so."

23 Is that consistent with what Mr. Goldstone  
24 told his board of directors?

25 A. No.

1 Q. Then lastly I want to draw your attention  
2 on this document to the first sentence. It says, "If  
3 KPMG or anyone else asks about the postponement of  
4 this deal, you should send them to me. Here is the  
5 language that McKee and I came up with to give to the  
6 RMBS investor." Do you see that?

7 A. Yes.

8 Q. And what do you understand Ms. Burns to be  
9 communicating there to the structured finance group  
10 and Amy Pell and others about what to do if you ask  
11 about the postponement of that securitization?

12 A. She wants to control the flow of that  
13 information.

14 Q. And do you understand that she intends to  
15 provide you the investor explanation that's contained  
16 in this document and that's inconsistent with what  
17 Mr. Goldstone was telling his board of directors?

18 A. Yes.

19 Q. And does that give you any concern?

20 A. Yes.

21 Q. We talked about management integrity  
22 before. Does that raise a management integrity issue  
23 for you?

24 A. Yes.

25 Q. Can you explain that?

1           A.     I would say they're not being forthcoming  
2     at all the information that would be necessary for  
3     the external auditors to have at a critical time when  
4     we're reaching our conclusions about the auditors'  
5     reports.

6           Q.     Now I want to talk to you about the company  
7     contemplating selling assets. Let's look at  
8     Plaintiff's Exhibit 62 again. That's another one of  
9     Mr. Goldstone's emails to the board. This is one  
10    from February 21. And you'll see that before getting  
11    to the numbered paragraphs, Mr. Goldstone writes, "We  
12    plan to meet this call," and he's referring to the  
13    Citi margin call. "We plan to meet this call with  
14    the following strategies." Number 6 says, "We may  
15    undertake additional asset sales depending on how  
16    market conditions evolve over the next few weeks  
17    offsetting previously mentioned gains."

18                   Were you told prior to the time that KPMG  
19    completed its audit work that Mr. Goldstone was  
20    contemplating selling assets?

21           A.     No.

22           Q.     Is that something that would have been  
23    important for you to know?

24           A.     Yes.

25           Q.     Why would that have been important for you



1 to know?

2 A. Because again, that wasn't consistent with  
3 the company's assertions that they were making to us  
4 at the time as to the reason for, for example,  
5 selling the I/O strip that they had previously sold  
6 to take advantage of market opportunities, and this  
7 would be contrary to the OTTI assertion that the  
8 company made to us at that time, that they could hold  
9 these assets to their maturity until they recovered.

10 Q. And staying on this same document, if you  
11 look up at item -- the second item on this list, Mr.  
12 Goldstone writes one of the ways they plan to meet  
13 the Citi margin call was "Having Citi sell a \$110  
14 million interest-only security that may generate \$20  
15 to \$25 million. That sale may also generate a gain  
16 on sale against which we might be able to sell other  
17 assets at a loss to net something close to zero." Do  
18 you see that?

19 A. Yes.

20 Q. And what do you understand Mr. Goldstone to  
21 be saying there?

22 A. He's talking about a potential sale that  
23 they would be making out of their portfolio of an  
24 interest-only security, which is a specific type of  
25 security, that would potentially generate a gain to

1 help them satisfy the Citi margin call.

2 Q. And is that information that was provided  
3 to you prior to the time that you issued your audit  
4 opinion?

5 A. No.

6 Q. And would it have been important for you  
7 have that information?

8 A. Yes.

9 Q. Okay. The last of the category of things I  
10 want you to look at, if we can go to Plaintiff's  
11 Exhibit 95, and again, this is another one of Mr.  
12 Goldstone's emails. This is one from February 25.  
13 And Mr. Goldstone writes his board, including Mr.  
14 Simmons, if we go down to, I guess, the third  
15 paragraph from the bottom, he says, "Finally, we have  
16 been funding loans at a reduced rate over the past  
17 few days and are working very hard at trying to add  
18 warehouse capacity to enable us to pick up the  
19 funding pace. I met with Credit Suisse today and we  
20 are hopeful to open their warehouse line for an  
21 additional \$50 million tomorrow. That would help our  
22 customers a great deal."

23 What do you understand Mr. Goldstone to be  
24 communicating to his board in that paragraph?

25 A. That the company is not able to fund loans

1 or close loans at the level that they had previously  
2 been accustomed to because they don't have the  
3 capacity through their lending arrangements with  
4 Credit Suisse.

5 Q. And is that something that would have been  
6 significant to you while you were doing your audit  
7 work?

8 A. Yes.

9 Q. And tell me why.

10 A. Because again, that would speak to the  
11 degree of struggle. If the company is not able to  
12 fund loans, that means that they're potentially short  
13 of cash, and that whole notion of having sufficient  
14 resources to make the assertions in the -- related to  
15 going concern and OTTI are dependent upon that.

16 Q. Well, Mr. Goldstone thought this was  
17 sufficiently important to inform his board on  
18 February 25. Did he tell you this fact?

19 A. No.

20 Q. And a fact of this significance -- would  
21 you have expected him to bring it to you?

22 A. Yes.

23 Q. These documents we went through -- had you  
24 seen any of these documents at the time you reached  
25 your OTTI determination?

1 A. No.

2 Q. Had you seen any of these documents at the  
3 time you reached your conclusion regarding Thornburg  
4 being a going concern?

5 A. No.

6 Q. Mr. Goldstone never brought any of this to  
7 your attention?

8 A. No.

9 Q. Mr. Simmons never brought any of this to  
10 your attention?

11 A. No.

12 Q. If you had all of this information, would  
13 you have reached the same conclusion regarding  
14 whether or not Thornburg was, in fact, a going  
15 concern?

16 A. We would not have reached the same  
17 conclusion.

18 Q. And if you had had all this information,  
19 would you have reached the same conclusion whether or  
20 not Thornburg's assets had the ability to hold their  
21 impaired assets?

22 A. We would not have reached that same  
23 conclusion.

24 Q. Mr. King, if you could put up Plaintiff's  
25 Exhibit 321, please.

1           This document is the Form 10-K that was  
2 ultimately filed. And if we can turn to pages F3 and  
3 F4. This is one that's in your binder, if you want  
4 to look there, as well. This paper is entitled  
5 "Report of independent registered public accounting  
6 firm." What do you recognize this to be?

7           A. This is KPMG's report on the 2007 financial  
8 statements.

9           Q. So this is the opinion that I've been  
10 asking about previously?

11          A. Right. This is the auditor's opinion and  
12 report that's issued at the culmination of an audit.

13          Q. Just to make sure it's clear, let's go  
14 through what this says. This document is addressed  
15 to the Thornburg board of directors and shareholders;  
16 is that right?

17          A. Yes.

18          Q. If we look at the first paragraph there,  
19 there is a sentence that says, "Thornburg Mortgage,  
20 Inc.'s management is responsible for these  
21 consolidated financial statements and financial  
22 statement schedule for maintaining effective internal  
23 control over financial reporting and for its  
24 assessment of the effectiveness of internal control  
25 over financial reporting, including in the

1 accompanying management annual report on internal  
2 control over financial reporting appearing under item  
3 9.

4 What is that communicating to Thornburg's  
5 investors and shareholders and board members?

6 A. It communicates that management is the  
7 party that's responsible for making sure that the  
8 financial statements are accurate and that their  
9 internal control structure is operating in order to  
10 prevent or detect material instances of fraud, and  
11 it's not auditor's responsibility. Our  
12 responsibility is to conduct an audit, which the  
13 report will say later on.

14 Q. If you look at the next sentence, does that  
15 sentence describe what your responsibility was?

16 A. It does. It says --

17 Q. Can you explain that, please?

18 A. Our responsibility is to express an opinion  
19 on the financial statements and financial statement  
20 schedules and to provide an opinion on the company's  
21 internal control over financial reporting based on  
22 our audits. So we do the audit, the company prepares  
23 the financial statements, and our opinion wraps onto  
24 the financial statements.

25 Q. Looking at the next-to-the-last paragraph

1 on this page, you say -- you write, "Because of its  
2 inherent limitations, internal control over financial  
3 reporting may not prevent or detect misstatements.  
4 Also, projections of any evaluation of effectiveness  
5 to future periods are subject to the risk controls  
6 may become inadequate because of changes in  
7 conditions or that the degree of compliance with the  
8 policies or procedures may deteriorate."

9 Then you go on and I understand this next  
10 to be your opinion. "In our opinion, the  
11 consolidated financial statements referred to above  
12 present fairly in all material respects the financial  
13 position of Thornburg Mortgage, Inc. and subsidiaries  
14 as of December 31, 2007, and 2006, in the results of  
15 their operations and their cash flows for each of the  
16 years in the two-year period ended December 31, 2007,  
17 in conformity with U.S. generally accepted accounting  
18 principles."

19 Having now seen the documents that we've  
20 gone through, do you still believe that opinion to be  
21 correct?

22 A. No, I do not.

23 Q. Now, Ms. Reinhart, was your deposition  
24 taken in this matter?

25 A. Yes.

1 Q. And was it at the defendants' -- the  
2 defense required that you sit for a deposition?

3 A. Yes.

4 Q. And if you remember, do you remember  
5 roughly how long they deposed you?

6 A. It was about a day-long deposition.

7 Q. Did they ask you about your going concern  
8 opinion?

9 A. Yes.

10 Q. Did they ask you about the OTTI  
11 determination that you had reached?

12 A. Yes.

13 Q. And during that deposition, did counsel for  
14 the defendant show you all of these documents that  
15 we've just walked through?

16 A. No, I didn't see those.

17 Q. Okay. They didn't try to find out what you  
18 thought about these various documents that I've now  
19 shown you?

20 A. No.

21 Q. Do you think it would have been a more fair  
22 examination if they had, in fact, shown you these  
23 documents that you didn't see prior to the time that  
24 you reached your audit conclusion?

25 A. It certainly would have been more complete,



1 I would say.

2 Q. Now, before we get to the actual filing of  
3 the 10-K, there is one additional topic I want to  
4 cover, and that's specific communications, both  
5 written and oral, that you had with the defendants  
6 prior to the Form 10-K being filed.

7 Mr. King, I'd like to start with  
8 Plaintiff's Exhibit 240.

9 As you may remember, that's the Thornburg  
10 going concern memo; right?

11 A. Yes.

12 Q. And if we turn to page 4, please, Mr. King,  
13 the third paragraph on that page. There you go.  
14 Thank you.

15 And in this memorandum, Thornburg writes,  
16 "Margin calls made or received are being met and the  
17 change in collateral value is being verified on a  
18 normal daily basis."

19 Can you explain what you understood that to  
20 mean about the timeliness of which margin calls were  
21 being satisfied?

22 A. That they're satisfying them on a daily  
23 basis in accordance with their agreements with their  
24 repurchase agreement counterparties.

25 Q. Is that what you understood at the time

1 that you were doing your audit work?

2 A. Yes.

3 Q. And did you understand that that  
4 representation was true?

5 A. At the time we were doing our audit work,  
6 we certainly thought it was true.

7 Q. And did Mr. Goldstone ever tell you it  
8 wasn't true?

9 A. No.

10 Q. Did Mr. Simmons ever tell you it wasn't  
11 true?

12 A. No.

13 Q. If we can just go back to the very first  
14 part of this document again. This is a document from  
15 Mr. Buniel, who I understand was an employee at  
16 Thornburg, and it was addressed to Larry Goldstone,  
17 Clay Simmons, Jane Starrett, and the file; right?

18 A. Yes.

19 Q. Now, in addition to this written  
20 communication, did you have any oral communications  
21 with anyone at Thornburg during the going concern  
22 memo process?

23 A. Yes.

24 Q. Now, were you aware at that time that that  
25 memo-writing process was going on, that Thornburg had

1 entered into certain transactions involving their I/O  
2 strips?

3 A. Yes.

4 Q. What, if anything, did Thornburg tell you  
5 about the reason for those sales of I/O strips?

6 A. Our understanding and what I was told was  
7 that they sold the I/O strips in order to take  
8 advantage of opportunities in the marketplace; that  
9 the market was willing to pay them more than they  
10 thought the security was worth.

11 Q. Did they say anything about that it was  
12 done to satisfy liquidity?

13 A. No.

14 Q. Let's take a look at Plaintiff's Exhibit  
15 312, please. This is a document we haven't looked at  
16 yet. It's entitled "February 28, 2008, market  
17 events." It appears to be a KPMG workpaper and its  
18 purpose is listed as to document the client's  
19 analysis regarding the events that unfolded  
20 immediately after filing their Form 10-K.

21 And if you look over on to page 2, the  
22 first full paragraph there, I'm going to read you the  
23 first and last sentence of that paragraph. It says,  
24 "The audit team was aware that Thornburg was in the  
25 process of selling certain assets, and management

1     asserted that these sales were for reasons other than  
2     immediate liquidity needs." Then it goes on, "Our  
3     understanding was that management believed the I/O  
4     strips could sell at a premium in the market, and  
5     received an opportunity to sell the I/O strips for  
6     more than management believed they were worth."

7             Is that essentially writing down the oral  
8     representation you just described to me?

9             A.    Yes.

10            Q.    And that oral representation -- who made  
11     that to you?

12            A.    Mr. Simmons did.

13            Q.    And did he make it to you personally?

14            A.    Yes.

15            Q.    Now, you were aware, right, that the upshot  
16     of these transactions was going to be that Thornburg  
17     would receive money; right?

18            A.    Yes.

19            Q.    And you would understand that they could  
20     use that money for any purpose they wanted, including  
21     to satisfy margin calls; right?

22            A.    Yes.

23            Q.    So then what difference does it make  
24     whether they undertook to sell these assets  
25     specifically to satisfy margin calls or because there

1 was a good price in the market?

2 A. Because it would be important to us to  
3 understand, again, the purpose for the sale. If it  
4 was to satisfy margin calls, that would speak to the  
5 degree of the struggle that the company was having at  
6 that particular point in time, and we would have  
7 wanted to know about that.

8 Q. Now, in light of the documents that we've  
9 reviewed, including Mr. Goldstone's emails to the  
10 board, do you now believe that Mr. Simmons'  
11 communication to you about the purpose for those I/O  
12 strip sales was true?

13 A. No.

14 Q. Ms. Reinhart, what is a down-to-date  
15 meeting?

16 A. That's a meeting that auditors have with  
17 senior members of management at about the date that  
18 the opinion is signed.

19 Q. And what's the purpose of the meeting?

20 A. It's to provide an opportunity for  
21 management to convey to the auditors and for the  
22 auditors to ask management whether or not there have  
23 been any events of significance that we should become  
24 aware of that would have an impact on the financial  
25 statements and ultimately the audit report.

1 Q. And for what period of time are you seeking  
2 information? I mean, are you looking back to the  
3 time prior to the balance sheet date, December 31, or  
4 more recent events?

5 A. We're typically interested in more recent  
6 events, but it includes the entire audit period from  
7 the very first date of the company's fiscal year on  
8 which the report is based up through the date of our  
9 opinion.

10 Q. Is this something that you do for every  
11 audit prior to issuing your opinion?

12 A. Yes.

13 Q. And consistent with that practice, did you  
14 do one for Thornburg?

15 A. Yes.

16 Q. Let's take a look at one of your workpapers  
17 that I think addresses this. Let's go to workpaper  
18 document BY, Mr. King.

19 And you can see this document is entitled  
20 "Fraud and other specific topic inquiries." Under  
21 the section entitled "Management," it says, "Jenni  
22 Hall inquired of Jane Starrett, chief accounting  
23 officer, on February 27, 2008, Clay Simmons, chief  
24 financial officer, on February 27, 2008, and Larry  
25 Goldstone, chief executive officer, on February 27,

1 2008. We inquired of the following." And amongst  
2 the things it lists was company and its environment,  
3 including its internal control; management's  
4 assessment of the risk that the financial statements  
5 may be materially misstated due to fraud.

6 If we can turn over to page 2, Mr. King,  
7 we'll get page 2 and 3 in this part, there is a  
8 section in there entitled, "Going concern illegal  
9 acts, litigation, claims and assessments, subsequent  
10 events, related parties." It says, "Jenni Hall  
11 inquired of Jane Starrett, chief accounting officer,  
12 on February 27, 2008; Clay Simmons, chief financial  
13 officer, on February 27, 2008; and Larry Goldstone,  
14 chief executive officer, on February 27, 2008."

15 And then it says, "We inquired of the  
16 following," and it lists a variety of things,  
17 including knowledge of events or conditions and  
18 related business risks beyond the period of  
19 assessment used by management that may cast  
20 substantial doubt on the company's ability to  
21 continue as a going concern. And then the last  
22 bullet point on page 3 says, "Knowledge of any  
23 subsequent events in 2008."

24 Now, what do you understand what I just  
25 referred to to be referring to? Is that the

1 down-to-date meeting?

2 A. Yes.

3 Q. And your name wasn't listed there, but do  
4 you believe you participated in at least some of  
5 those down-to-date meetings?

6 A. Yes.

7 Q. And do you have any idea why your name  
8 wasn't listed there?

9 A. No.

10 Q. Now, tell me the meeting -- did you  
11 participate in one or more than one?

12 A. I participated in at least one.

13 Q. Tell me about that one. Who attended that  
14 meeting?

15 A. My recollection was that was with Mr.  
16 Simmons and Ms. Hall, and I believe Ms. Starrett was  
17 there, as well.

18 Q. The way you said that, do you have less  
19 certainty that Mr. Starrett was present?

20 A. It's been a while, but I think she was, but  
21 that's my best recollection.

22 Q. Now, when do you think that meeting would  
23 have occurred?

24 A. Either late the 26th or the 27th so very  
25 close to the opinion date, which was the 27th.



1 Q. For anything that you learned during that  
2 meeting, does it matter whether you learned it on the  
3 26th or the 27th?

4 A. No.

5 Q. Now, what about -- did you participate in  
6 the down-to-date meeting with Mr. Goldstone that's  
7 referred to in the exhibit we looked at?

8 A. I don't believe so.

9 Q. Let's talk about the meeting that at least  
10 involved Mr. Simmons. Can you just describe for the  
11 jury how that meeting was conducted, where it took  
12 place, who led the meeting, what sorts of questions  
13 were being asked?

14 A. It was conducted in his office, and so both  
15 Jenni and I were seated in front of his desk. And we  
16 had a memory jogger, a checklist that we use to go  
17 through various questions to make sure that we've  
18 covered all of the bases. And we went through those  
19 questions asking him about any matters that we needed  
20 to know about related to the subsequent event period  
21 in the financial statements that were going to be  
22 filed in the next day or so.

23 Q. I want to talk to you about some of those,  
24 in particular, but before I do, I want to ask you,  
25 did Mr. Simmons raise any particular issues during

1 that meeting?

2 A. He didn't raise any adverse issues at the  
3 time that he communicated to us.

4 Q. Did he tell you anything that suggested to  
5 you that there was anything unusual going on at the  
6 company?

7 A. No.

8 Q. Fair to say that his description was  
9 business as usual?

10 A. Yes.

11 Q. Is one of the topics that you asked about  
12 whether or not the company was in compliance with its  
13 contractual terms?

14 A. The contractual terms of its agreements,  
15 yes.

16 Q. And would those agreements -- would that  
17 include the reverse repurchase agreements that we've  
18 talked a little bit, you and I, today such as the  
19 Citi agreement that we looked at when we began?

20 A. Yes.

21 Q. Okay. And so would this question elicit a  
22 response that would include if Thornburg was not  
23 timely meeting its margin calls? Would that be the  
24 type of issue you're trying to raise by those  
25 questions?

1 A. Yes.

2 Q. And what, if anything, do you recall Mr.  
3 Simmons saying about whether Thornburg was meeting  
4 its margin calls in accordance with the terms of its  
5 contractual obligations?

6 A. He didn't indicate that they were not  
7 meeting the terms of those agreements.

8 Q. Did you ask any questions that would have  
9 clearly elicited the fact that the margin calls were  
10 being paid over a period of days as opposed to the  
11 terms of the agreement?

12 A. I don't specifically recall about asking  
13 that point, question, but we did ask about compliance  
14 with agreements, which would encompass the reverse  
15 repurchase agreements.

16 Q. And that question about compliance with  
17 agreements would have -- should have elicited Mr.  
18 Simmons to explain that certain margin calls had been  
19 paid in a way different than the contract required?

20 A. Yes.

21 Q. And what about, did Mr. Goldstone say  
22 anything about the value of Thornburg's collateral,  
23 its assets?

24 A. Yes, he did.

25 Q. What do you recall Mr. Simmons saying about

1 that?

2 A. Mr. Simmons conveyed to us that he thought  
3 the value of the company's collateral was --  
4 continued to be strong, and that the markets were  
5 stabilizing, and that he perceived the likelihood of  
6 a decline in values, and he put a range on it of 2 to  
7 3 percent that that would be unlikely. In fact, I  
8 think the word he used was "remote." It would be  
9 remote that a further decline would occur.

10 Q. And Mr. King, if you can call back up  
11 Plaintiff's Exhibit 249.

12 And Ms. Reinhart, that's the KPMG going  
13 concern memo that we've talked about at length today.  
14 And if we could go to page 6, please. At the top  
15 there, it says, "It is management's position that the  
16 likelihood that collateral values decrease by more  
17 than another 2 to 3 percent is remote. Per the  
18 discussion with Nate Fellers, capital markets, the  
19 decline in asset values was concentrated in the Alt-A  
20 securities within their portfolio. Alt-A securities  
21 make up about 20 percent of the balance. Management  
22 believes the fair values for these securities are at  
23 or approaching bottom, evidenced by recent purchases  
24 of similar securities by outside investors at these  
25 prices."

1           Is this you reporting what Mr. Simmons told  
2   you and Ms. Hall during the down-to-date meeting?

3           A.    Yes.

4           Q.    And after the time of this memorandum or  
5   after the time of the down-to-date meeting, did Mr.  
6   Simmons ever come to you and say that he changed his  
7   mind, that now it looked like maybe the company's  
8   assets might possibility decrease by more than 2 to 3  
9   percent?

10          A.    No.

11          Q.    Now, is part of this down-to-date meeting  
12   which you've been testifying to -- was there any sort  
13   of like wrap-up questions, something that you asked  
14   at the end of the -- at the end of the meeting?

15          A.    There is a question that I asked, and it's:  
16   Is there anything else that we should be aware of?  
17   The open-ended question that auditors -- that I  
18   asked. And I did not get a response back that would  
19   indicate there was anything that we should be  
20   concerned about in connection with the audit report  
21   that KPMG was about to issue.

22          Q.    Did he tell you that they were late meeting  
23   their margin call from Citi?

24          A.    No.

25          Q.    Did they tell you that Citi had issued them

1 a reservation of rights letter?

2 A. No.

3 Q. Did he tell you that they were late meeting  
4 a margin call from Credit Suisse?

5 A. No.

6 Q. Did he tell you that they were having to  
7 slow down their funding of new loans?

8 A. No.

9 Q. Did he provide you the numerous emails that  
10 Mr. Goldstone wrote to the board providing updates on  
11 the true liquidity situation of the company?

12 A. No.

13 Q. Did he tell you that they withdrew a  
14 securitization to raise money the company needed to  
15 avoid providing disclosures about margin calls?

16 A. No.

17 Q. Did he tell you that they were  
18 contemplating selling assets?

19 A. No.

20 Q. Did he tell you about the real purpose for  
21 the I/O strip sales?

22 A. No.

23 Q. Now, if you can explain to the jury what a  
24 management representation letter is. Is that  
25 something you're familiar with?

1 A. Yes.

2 Q. Can you explain what that is?

3 A. The management representation letter is a  
4 letter that management signs, senior management  
5 signs. In this case, I believe it was signed by Mr.  
6 Goldstone, Mr. Simmons, and Ms. Starrett, and they  
7 gave it to us, and it's got a date that coincides  
8 with the audit report, so February 27th of 2008. And  
9 it reaffirms certain things that you've seen in other  
10 exhibits. It reaffirms that the company takes  
11 responsibility for their financial statement. It  
12 reaffirms that the -- all information has been  
13 provided to us. It reaffirms that the financial  
14 statements are accurate and free of material  
15 misstatement. And it reaffirms that subsequent  
16 events have been provided to us, and that the company  
17 is in full compliance with all of its contractual  
18 agreements. And it's a long letter, in this case,  
19 and it covers a number of other elements, but that's,  
20 in substance, some of the key points.

21 Q. And when do you require management to  
22 provide that?

23 A. It matches the date of the auditor's  
24 report, so February 27, 2008.

25 Q. And why do you do that? Why do you require

1 it to be the date of your audit opinion?

2 A. So that there can be no misunderstanding  
3 about any gap that might exist there between the  
4 representation letter and auditor's report. It  
5 matches to the date.

6 Q. And I mean, are you seeking information up  
7 to the date of your audit report?

8 A. Yes, we are.

9 Q. Let's take a look at the one in this case,  
10 Plaintiff's Exhibit 268, please. Do you recognize  
11 this to be the management representation letter from  
12 Thornburg?

13 A. Yes.

14 Q. And as you predicted, it's dated February  
15 27, which is the date of your opinion; right?

16 A. Yes.

17 Q. And to everyone's relief we won't walk  
18 through all the provisions, but there are a few I  
19 would like to draw your attention to.

20 If we could look to paragraph 4, please.  
21 Mr. King, I'm going to look at 4e, so there you go.

22 4e says, "There are no events that have  
23 occurred subsequent to the balance sheet date and  
24 through the date of this letter that would require  
25 adjustment to or disclosure in the consolidated



1 financial statements."

2 Can you explain to the jury what you're  
3 asking the company to represent when they sign a  
4 letter that makes that representation?

5 A. We're asking them to affirm to us in  
6 writing that there hasn't been anything that has  
7 occurred after December 31, 2007, in this case, up  
8 through February 27, 2008, that need to be disclosed  
9 or recorded in the financial statements.

10 Q. And would that be -- would this particular  
11 representation be consistent with Thornburg having  
12 received a reservation of rights letter from Citi?

13 A. No, it would not.

14 Q. And as you sit here today, do you believe  
15 that this representation is true?

16 A. No.

17 Q. Let's take a look at paragraph 13, please.  
18 It's two pages forward, I believe. Paragraph 13,  
19 please. Here, the company represents, "The company  
20 has complied with all aspects of contractual  
21 agreements that would have a material effect on the  
22 consolidated financial statements in the event of  
23 noncompliance."

24 Can you explain what you understand that to  
25 be that the company is representing to you?

1           A.    They're telling us here that if they've --  
2   that they're in compliance, that they haven't  
3   violated the terms of any of their significant  
4   agreements that would be important to the  
5   consolidated financial statements.

6           Q.    And would that include their repo  
7   agreements, such as the agreement with Citi that we  
8   looked at earlier?

9           A.    Yes.

10          Q.    And as you sit here today, do you believe  
11   that representation to be true?

12          A.    No, I do not.

13          Q.    Take a look at paragraph 22. Paragraph 22  
14   states, "Debt securities that have been classified as  
15   held to maturity have been so classified due to our  
16   intent and ability to hold such securities. All  
17   other debt securities have been classified as  
18   available for sale or trading. Declines in value of  
19   debt or equity securities classified as available for  
20   sale or held to maturity are considered to be  
21   temporary because we have both the intent and ability  
22   to hold these impaired securities for a sufficient  
23   period of time, until maturity, if necessary, to  
24   allow for their recovery in market value."

25                   Without getting too deep into the weeds

1 about available for sale and so forth, but focusing  
2 on the issues we've been addressing today, what do  
3 you understand this paragraph to be representing?

4 A. Management is reasserting that the  
5 classification of their investment securities is  
6 consistent with their intent. So they intend to hold  
7 them, they don't intend to sell them, and they have  
8 financing in place such that they won't be forced to  
9 sell that if the lender withdrew that financing for  
10 some reason. So the classification is accurate.

11 Q. So the point is, the impaired assets that  
12 we've talked about -- they had the ability to hold  
13 those for the necessary period for the OTTI  
14 determination.

15 A. That's what they're telling us here.

16 Q. And I think before I said these were  
17 representations from the company. These are, in  
18 fact, representations from Mr. Goldstone, Mr.  
19 Simmons, and Ms. Starrett; right?

20 A. Yes.

21 Q. And the last paragraph I want to look at is  
22 paragraph 31. In that paragraph Mr. Goldstone and  
23 Mr. Simmons represented that "The consolidated  
24 financial statements disclose all of the matters  
25 which we are aware that are relevant to the entity's

1 ability to continue as a going concern, including  
2 significant conditions and events and our plans."

3 Can you explain what that paragraph is  
4 meant to be a representation of?

5 A. So here, they're again reaffirming that  
6 they've provided all of the elements that are  
7 necessary for the consideration and the evaluation of  
8 the going concern assertion that they made in the  
9 memorandums that we looked at earlier, and that there  
10 isn't anything that's missing from those.

11 Q. And knowing what you know now, do you  
12 believe that representation to be true?

13 A. No.

14 Q. Now, in doing your audit work and reaching  
15 your opinion, did you rely upon these  
16 representations?

17 A. Yes.

18 Q. Did you rely on management being truthful  
19 in these management representation letters?

20 A. Yes.

21 Q. Now I'd like to draw your attention to  
22 Exhibit 176. And actually, if we could look at the  
23 second page on this one. This is a Thornburg letter  
24 from February 29 to KPMG and it's signed by Mr.  
25 Simmons and Ms. Starrett. Looking at this document,

1 can you tell what their document is?

2 A. Yes. This is a representation letter that  
3 the company provided to us on the 29th in connection  
4 with a registration that they were going to be doing  
5 shortly after the audits of the financial statements  
6 were filed with the SEC.

7 Q. And when you say registration, that has to  
8 do with them raising money; is that right?

9 A. Raising money. It's a capital raise.

10 Q. And they needed a comfort letter, is that  
11 what it's called, from KPMG in order to do that?

12 A. Right, they needed to effectively have this  
13 registration statement out there and available so  
14 that they could then issue securities under that  
15 registration statement. So this would provide the  
16 vehicle for them to do that legally under the  
17 securities laws.

18 Q. Now, let's take a look at what Mr. Simmons  
19 at least represented to you on February 29. "In  
20 connection with the registration statement," I'll  
21 skip the number, "to be filed by this company under  
22 the Securities Act of 1933, we affirm to the best of  
23 our knowledge and belief that during the period from  
24 December 31, 2007, to this date, February 29, 2008,  
25 and except as set forth in such registration

1 statement and related prospectus, no events have  
2 occurred that would require adjustment to the  
3 consolidated financial statements as of December 31,  
4 2007, or that should be disclosed in order to keep  
5 those statements from being misleading." Skipping  
6 ahead a little bit, we're not quite to February 28  
7 yet, but the jury has heard evidence about what  
8 happened on that date. Do you understand that  
9 statement to be true?

10 A. It's not true.

11 Q. And why do you believe that not to be true?

12 A. Because I became aware that on that date  
13 they failed to meet a margin call with JPMorgan, and  
14 JPMorgan declared them in default.

15 Q. So having gone through your audit work and  
16 your going to the audit committee, and documents you  
17 didn't see, and communications you had and the  
18 representation letter you received, if we can put  
19 Plaintiff's Exhibit 321 back up. Early in the  
20 morning on February 28, did the 10-K get filed?

21 A. Yes.

22 Q. That's that document here?

23 A. Yes.

24 Q. After that document got filed, were there  
25 any significant developments that followed shortly

1       thereafter that you learned of?

2           A.     Yes.

3           Q.     And what were those?

4           A.     That the company received a demand from  
5 JPMorgan, as I mentioned, and they were unable to  
6 satisfy that demand, and this was in the form of  
7 margin calls under JP's repo agreement with the  
8 company.

9           Q.     And how did you learn this fact?

10          A.     I got a call from Ms. Hall on Sunday, March  
11 2.

12          Q.     Where were you when you received that call?

13          A.     I was in the car with my family coming back  
14 from a ski trip.

15          Q.     And so what did you do after Ms. Hall  
16 called you?

17          A.     I told her that I would meet her in the  
18 office later that evening.

19          Q.     Did you, in fact, do that?

20          A.     Yes.

21          Q.     What happened when you and Ms. Hall got to  
22 the office?

23          A.     She related to me what the events were.  
24 Then we called our SEC partner, Mr. Clyde Womack, to  
25 inform him of the events and discussed it.

1 Q. And did you consider this to be a good  
2 development?

3 A. No.

4 Q. And did you consider it an event that was  
5 going to require additional work on KPMG's part?

6 A. Yes.

7 Q. So after you spoke with Mr. Womack, did you  
8 do anything further on Sunday night?

9 A. We agreed that we would make plans in the  
10 morning to reconvene and talk about it further, and  
11 make some calls for our national office, which we  
12 referred to as the Department of Professional  
13 Practice.

14 Q. Let's take a look at Plaintiff's Exhibit  
15 280, please. And this is an email from that Monday,  
16 March 3, from you to Mr. Taylor. Subject line: "Are  
17 you available? I need to speak with you ASAP." Is  
18 this you reaching out to Mr. Taylor to have those  
19 conversations?

20 A. Yes.

21 Q. So fair to say that you continued to  
22 discuss this with folks at KPMG?

23 A. Yes.

24 Q. And did you ultimately conclude that you  
25 needed to gather additional information?



1 A. Yes.

2 Q. Let's take a look at Plaintiff's Exhibit  
3 201, please. I'd like to look at the second email.  
4 This is an email from Ms. Hall to Mr. Goldstone,  
5 Ms. Starrett, Mr. Simmons, and Mr. Buniel and you're  
6 copied on it. Looks like it's late Monday night or  
7 early Tuesday morning. And it says, "Please give us  
8 a call in the morning. We will walk you through the  
9 attached."

10 So let's look at the attached, if can you  
11 turn the page, please, and blow up the top half of  
12 the page, if that's possible. And this is what Ms.  
13 Hall communicated to the folks I listed at Thornburg.  
14 It says, "A consent to include our audit opinion in a  
15 registration is, in effect, a reissuance of our audit  
16 opinion. Therefore, events that occurred subsequent  
17 to our original opinion and the date of our consent  
18 must be considered in evaluating the continued  
19 validity of our audit opinion."

20 What do you understand that to be  
21 communicating?

22 A. That's effectively saying here that if we  
23 are to provide a consent in connection with the  
24 company's plans to file a Form S-3 with the  
25 Securities and Exchange Commission, that included in

1 that document is the auditor's report. And because  
2 it's included, it's effectively reissuing the report  
3 again. If there's any events that have occurred, we  
4 have to consider those events in order to be able to  
5 reissue that report.

6 Q. Okay. And then the document goes on. It  
7 says, "Considering the proximity of the events to the  
8 filing of the Form 10-K, there is a presumption that  
9 the company should have been aware or at least should  
10 have considered the potential that there was a  
11 reasonable chance that the company could have faced  
12 margin calls in excess of its ability to meet such  
13 calls."

14 Can you explain what that is communicating?

15 A. That's effectively recounting the  
16 circumstances that had just transpired, and that was  
17 that the company, after filing its Form 10-K, wasn't  
18 able to meet the margin call demand that was made  
19 from JPMorgan that very next day. So we're  
20 effectively saying here that there is some indication  
21 that -- an awareness that perhaps should have been  
22 present at the time.

23 Q. And then the next sentence says, "The  
24 company's inability to meet margin calls within 48  
25 hours of filing the Form 10-K calls into question

1 management's assertion and consequently our audit  
2 opinion as of the filing date that the company had  
3 the ability to hold the securities for the  
4 foreseeable future, and that the available-for-sale  
5 securities did have an other-than-temporary  
6 impairment to be recognized" -- I'm sorry, "did not  
7 have an other-than-temporary impairment to be  
8 recognized in earnings as of December 31, 2007." So  
9 what is that saying?

10 A. That's saying that the company didn't have  
11 sufficient liquidity, as demonstrated by its  
12 inability to meet the margin call from JPMorgan, so  
13 it calls into question the assertion that they made  
14 to us that they could hold these securities until  
15 they recovered.

16 Q. And then it says, "The question at hand:  
17 What did management know before, during, and after  
18 the filing and what should management have known?  
19 Per discussions with management, the events on August  
20 28 through March 3 were not and could not have been  
21 reasonably anticipated."

22 And then it goes on to seek some  
23 information; is that correct?

24 A. Yes, it does.

25 Q. Okay. So this is sort of laying out your

1 position and asking them to provide you some  
2 information; is that right?

3 A. Yes.

4 Q. Now, did you get back written responses  
5 from Thornburg in response to this request?

6 A. We did get back written responses for some  
7 of the requests.

8 Q. And they knew that this was very  
9 time-sensitive; correct?

10 A. Yes.

11 Q. And they got back to you the next day?

12 A. Yes.

13 Q. So the first document I'd like to look at  
14 is Plaintiff's Exhibit 282, please. So this is an  
15 email from Ms. Starrett to Ms. Hall and to you, and  
16 it appears to be answering a series of questions.  
17 And I want to draw your attention to the one there,  
18 the one that says, "Do they essentially have the  
19 unilateral ability to reduce asset values?"

20 And Mr. King, if we could go back to  
21 Plaintiff's Exhibit 201 and look at the last page of  
22 that document, please, then blow up paragraph 3. And  
23 if you look there, one of the questions that you're  
24 asking is: "Do they essentially have the unilateral  
25 ability to reduce asset values?"

1           So Exhibit 282 is Ms. Starrett's answer to  
2           that question. Is that what you understand?

3           A.     Yes.

4           Q.     Okay. So let's look at what Ms. Starrett  
5           wrote. "No, but in reality, they really have the  
6           ultimate say, and under current conditions have  
7           generally discounted the company's view when it has  
8           challenged the pricing. So the company is, in  
9           effect, solely subject to their pricing. The company  
10          has submitted disputes where it believes its assets  
11          were undervalued but, as stated, upon dispute, the  
12          counterparty rechecks their margin through their  
13          pricing department."

14          So what do you understand Ms. Starrett to  
15          be communicating to you there?

16          A.     She's essentially saying there is a bit of  
17          back-and-forth between the company and the  
18          counterparty, but ultimately, if there is a  
19          disagreement, the counterparty, or the lender,  
20          rechecks and their pricing department has the  
21          ultimate say in the value.

22          Q.     Now, let's take a look at Plaintiff's  
23          Exhibit 284, please. Do you recognize this as being  
24          a further response of Thornburg on March 4 in  
25          response to the document that we were looking at

1 previously from Ms. Hall late on -- I guess late on  
2 the night of March 3 or early on the morning of March  
3 4?

4 A. Yes.

5 Q. Okay. And at the top there, there is some  
6 handwriting that says, "PBC PVC Kyle Rhoades and Clay  
7 Simmons." Can you tell me what you understand that  
8 to be?

9 A. The "PBC" stands for "prepared by client,"  
10 and the authors were Kyle Rhoades, who worked at  
11 Thornburg, and Clay Simmons.

12 Q. I just want to draw your attention to one  
13 particular thing that's contained in this document.  
14 In the second paragraph it says, "Due to a number of  
15 factors, including the unexpected collapse of a major  
16 hedge fund in Europe, the mortgage market gapped  
17 significantly wider." Do you know what Mr. Rhoades  
18 and Mr. Simmons are referring to here when they refer  
19 to an unexpected collapse of a major hedge fund?

20 A. That was the Peloton fund that collapsed.

21 Q. Having now seen the emails that Mr. Simmons  
22 was on and that Mr. Goldstone was on, do you have an  
23 understanding of whether this was known to Mr.  
24 Simmons prior to the Form 10-K being filed?

25 A. Yes.

1 Q. And what's that understanding?

2 A. They were aware that Peloton, a European  
3 hedge fund I think was how it was put, was  
4 collapsing.

5 Q. Now, Mr. King, would you call up  
6 Plaintiff's Exhibit 285, please?

7 Ms. Reinhart, I believe this document is  
8 another copy of the document that we were looking at  
9 before the request that you sent over to Thornburg.  
10 But this one comes from KPMG's files. Look down at  
11 the Bates number at the bottom. You'll see that the  
12 Bates number reflects it's from your files. Does  
13 this -- judging from the handwriting and the  
14 markings, does that seem correct to you?

15 A. Yes, it does.

16 Q. Okay. What I'd like to do is draw your  
17 attention to the second page, and you see that there  
18 is -- it says, "Outline time line of events," and  
19 there is a whole series of things listed there. What  
20 do you understand this to be?

21 A. This is a request that we were providing to  
22 the company to give the KPMG auditors information  
23 about the margin call activity in the time periods  
24 that are outlined here.

25 Q. Okay. I want to draw your attention to the

1 one at (B)(i). It says, "Correspondence with  
2 counterparties for the two weeks prior to filing  
3 along with supporting evidence." Do you see that?

4 A. Yes.

5 Q. And is that a request for communications  
6 that Thornburg was having with its repo lending  
7 counterparties?

8 A. Yes.

9 Q. And would that request have -- was that  
10 request asking for documents such as the Citi  
11 reservation of rights letter?

12 A. Yes.

13 Q. And in response to this request, did  
14 Thornburg, in fact, provide you that Citi reservation  
15 of rights letter?

16 A. No.

17 Q. From looking at this document, can you  
18 determine what Thornburg's response was to this  
19 particular request?

20 A. Yes.

21 Q. And what was that?

22 A. That management indicated there was minimal  
23 correspondence in that time period.

24 Q. Okay. All right, Ms. Reinhart. Now I'd  
25 like to move to a slightly new topic.



1           So after you learned about these margin  
2       calls and after you gathered this information, what  
3       did KPMG decide that it was going to do about its  
4       audit opinion?

5           A.     We decided that we would withdraw our audit  
6       report.

7           Q.     When you say "we," who is the "we" in that  
8       sentence?

9           A.     It's me and the SEC concurring partner,  
10      Mr. Womack; Mr. McLamb, who was the business unit  
11      professional practice partner. There were  
12      individuals in our Department of Professional  
13      Practice in New York, which included Mr. Foley, Mr.  
14      Crawford, and I believe Mr. Ranzilla. And so it was  
15      a decision that was reached among partners at the  
16      highest level of the firm.

17          Q.     What is Mr. Ranzilla's position?

18          A.     He was in charge of KPMG's Risk Management  
19      Department.

20          Q.     Big job.

21          A.     A very big job.

22          Q.     And so it's fair to describe these people  
23      as senior folks at KPMG?

24          A.     Yes.

25          Q.     And why were so many senior folks at KPMG

1 involved in making this one decision?

2 A. Because we don't take the potential  
3 withdrawal of an audit opinion on a public company  
4 lightly.

5 Q. Any idea, between yourself and these five  
6 other folks, how many years of auditing experience  
7 that would represent in 2008?

8 A. 300. That's a guess. A lot.

9 Q. So I take it that this is a serious  
10 decision.

11 A. It is.

12 Q. Involving serious people at the highest  
13 levels of your firm?

14 A. Yes.

15 Q. And it's not a decision that's made  
16 lightly?

17 A. Not at all.

18 Q. And are there consequences to KPMG deciding  
19 to withdraw its opinion?

20 A. Yes.

21 Q. And can you tell the jury what some of  
22 those consequences would be?

23 A. Well, first off, it would certainly draw  
24 the attention of the regulators, pretty much right  
25 away, that there is an opinion being withdrawn. And

1 it draws unfavorable attention certainly to me  
2 personally as a partner within the firm.

3 Q. When you say the regulators, you're talking  
4 about me, you're talking about the SEC; right?

5 A. Yes.

6 Q. So your point is, it makes it more likely  
7 that you're going to be investigated by withdrawing  
8 your audit opinion than if you don't?

9 A. Yes.

10 Q. So you convened all these people with lots  
11 of experience, you thought about it, and you  
12 ultimately decided to do this thing that apparently  
13 is not something that's done lightly or has any  
14 particular good benefit to you; is that right?

15 A. That's right.

16 Q. Okay. So why did you decide that this was  
17 the thing that you had to do?

18 A. Well, it was the right thing to do. We  
19 became aware that the financial statements were  
20 misleading and that investors were relying upon that  
21 report. It became paramount to getting the report  
22 off the street so that further reliance was not made.

23 Q. Let's take a look at Plaintiff's Exhibit  
24 281. Is this a letter from KPMG to the Thornburg  
25 audit committee advising them of this decision that

1 you and the other folks had reached about withdrawing  
2 the audit opinion?

3 A. Yes.

4 Q. And if you look here in the middle  
5 paragraph it says, "Under our professional standards,  
6 we have considered conditions and events that were  
7 known or should have been known to the company as of  
8 the date of our auditor's report and have concluded  
9 that the aforementioned financial statements contain  
10 material misstatements associated with  
11 available-for-sale securities and that our auditor's  
12 report should have contained an explanatory paragraph  
13 indicating that substantial doubt exists relative to  
14 the company's ability to continue as a going concern  
15 for a reasonable period of time."

16 Can you explain to the jury what those  
17 words mean?

18 A. Those words mean that we believe the  
19 financial statements are not accurate with respect to  
20 the accounting for those securities that had  
21 other-than-temporary impairments and that the  
22 company's liquidity assessment related to going  
23 concern that wrapped around those securities -- that  
24 those conclusions were not accurate any longer.

25 Q. And the next sentence says, "Accordingly,

1 the company should take appropriate actions to  
2 prevent further reliance on our auditor's report."

3 What does that mean?

4 A. That means that the company needs to advise  
5 the investing public via a filing, a Form 8-K, that  
6 the auditors have withdrawn their report.

7 Q. And why are you telling the company that  
8 they need to take those actions?

9 A. Because they're responsible for their  
10 financial statements and their securities filings.  
11 That's not something that the auditors do.

12 Q. And now is this something that gets  
13 communicated? Who does this get communicated to?  
14 Does it get communicated to the audit committee?

15 A. Yes, it does.

16 Q. Let's take a look at Exhibit 180, please.

17 THE COURT: Mr. Kasper, I want to give the  
18 jury a little break and particularly Ms. Bean. Would  
19 this be a good time for a break?

20 MR. KASPER: Yes, Your Honor.

21 THE COURT: All right. Let's come back in  
22 a few minutes and work till about 5:30.

23 A. All rise.

24 (The jury left the courtroom.)

25 THE COURT: Anything we need to discuss?

1 MR. KASPER: No, Your Honor.

2 MR. McKENNA: No, Your Honor.

3 THE COURT: Mr. Lee?

4 MR. LEE: No, Your Honor.

5 (The Court stood in recess.)

6 THE COURT: All right. Are y'all ready?.

7 (The jury entered the courtroom.)

8 THE COURT: All right. Everyone be seated.

9 All right, Ms. Reinhart. I'll remind that  
10 you're still under oath.

11 Mr. Kasper, if you wish to continue your  
12 direction of Ms. Reinhart, you may do so at this  
13 time.

14 MR. KASPER: Thank you, Your Honor.

15 Q. (By Mr. Kasper) Ms. Reinhart, do you see  
16 there on the screen Plaintiff's Exhibit 180, which is  
17 the March 4 audit committee minutes? That's the same  
18 date as the letter we were looking at before the  
19 break. Is this when you communicated to the board  
20 that you were withdrawing your opinion?

21 A. Yes.

22 Q. How did that go?

23 A. It was tough. It was a difficult  
24 conversation.

25 Q. What was the company's position?

1           A.     The company -- their position was, they  
2     didn't want to withdraw that report; that they wanted  
3     us to consider whether or not the events that had  
4     occurred would be events that would be recorded in  
5     the first quarter of 2008.

6           Q.     And what did you ultimately conclude?

7           A.     That the report needed to be withdrawn.

8           Q.     And did that decision mean it was likely  
9     that Thornburg would restate its financials?

10          A.     Yes.

11          Q.     And did they ultimately reach that  
12     determination?

13          A.     Yes.

14          Q.     So can you explain to the jury, when do you  
15     have to restate your financials?

16          A.     When you become aware of a material  
17     misstatement, an error in the financial statements,  
18     required to go through a consideration as to whether  
19     or not they need to be restated.

20          Q.     And if there is such an error, that's when  
21     you have to file a restatement?

22          A.     In general, yes. It depends somewhat on  
23     the time period after the discovery of the error.  
24     But typically, if you find that the financial  
25     statements contain an error, you go through a

1 restatement.

2 Q. Is that something, you know, that's  
3 discretionary or are there rules that prescribe it  
4 and if the rules say you have to restate, you have to  
5 restate?

6 A. It's a little bit of both, I would say.  
7 There is judgment involved in the determination, but  
8 once you reach the conclusion that the report would  
9 be withdrawn, then you proceed through the  
10 restatement.

11 Q. Now, would there be consequences for  
12 Thornburg associated with restating its financial  
13 statements?

14 A. Yes.

15 Q. It was going to make their business more  
16 complicated going forward; correct?

17 A. Yes.

18 Q. And it would likely make it more difficult  
19 for them to raise money; right?

20 A. Yes.

21 Q. But if a restatement is going to make it  
22 more difficult for a company to raise money, is that  
23 a reason not to restate?

24 A. No.

25 Q. And I assume it was going to cause a lot of



1 disruption, and Thornburg's management was going to  
2 have to pay a lot of attention to this issue. And if  
3 a restatement is going to cause that sort of  
4 disruption and management's resources being diverted,  
5 is that a reason not to restate?

6 A. No.

7 Q. And does Thornburg's restatement advantage  
8 KPMG in some way?

9 A. No.

10 Q. Did KPMG withdraw its audit opinion for any  
11 reason other than the fact that the auditing  
12 standards require it?

13 A. No.

14 Q. And do you have a view of the investors'  
15 need for that information that KPMG had withdrawn his  
16 audit opinion?

17 A. I do have a view, yes.

18 Q. What's that view?

19 A. That the investors needed to know that the  
20 financial statements contained a material error in  
21 it, and they needed to know that promptly.

22 Q. And that's what we saw in your letter, that  
23 you were advising them that they needed to let  
24 investors know that; right?

25 A. Yes.

1 Q. And did you ask them to release this fact  
2 that you had withdrawn your opinion right away?

3 A. Yes.

4 Q. And what did they say?

5 A. My recollection is they wanted to delay the  
6 filing of the 8-K that included our letter and notice  
7 a few days.

8 Q. Let's take a look at Plaintiff's Exhibit  
9 328, please. So this is a document dated March 7.  
10 And if we look at item 4.02, which is about the fifth  
11 or sixth page in, Mr. King, this says, "On March 4,  
12 the company was advised by its independent  
13 accountant, KPMG, that no further reliance should be  
14 placed on the auditor's report dated February 27,  
15 2008."

16 To your knowledge, was this the first time  
17 that fact was communicated to the market?

18 A. Yes, this is the first time.

19 Q. And this was on March 7?

20 A. Yes, I believe it was.

21 Q. And so on March 5th, your audit report had  
22 been withdrawn, but Thornburg investors were not  
23 aware of that fact?

24 A. That's right.

25 Q. And March 6, also the same?

1 A. That's right.

2 Q. So people were out making investment  
3 decisions without knowing that you had withdrawn your  
4 audit opinion?

5 A. I would presume so, yes.

6 Q. And you had asked the company to disclose  
7 the fact that you'd withdrawn your audit opinion, but  
8 they refused?

9 A. Well, I don't know that they refused it,  
10 but they wanted to delay it.

11 Q. They requested to delay it.

12 A. Yes.

13 Q. In light of the company's decision to  
14 restate, would you have to issue a new audit opinion?

15 A. Yes.

16 Q. And before you could do that, did you have  
17 to look into why there was a need for a restatement  
18 in the first place?

19 A. Yes.

20 Q. And was that sort of -- was that question  
21 looked into prior to your issuing your audit opinion  
22 in connection with the restatement?

23 A. Yes.

24 Q. And was that the work that Mr. McLamb was  
25 involved in?

1 A. He was involved in a portion of that work,  
2 yes.

3 Q. And he conducted some interviews related to  
4 that?

5 A. Yes.

6 Q. And do you know, one way or the other,  
7 whether or not he asked the Thornburg employees that  
8 he did meet with why KPMG was not told that margin  
9 calls were not met on a daily basis?

10 A. I wasn't part of those meetings, so I don't  
11 recall.

12 Q. But is it fair to say that he did do some  
13 work in connection with making that determination?

14 A. Yes.

15 Q. Okay. And then after KPMG withdrew its  
16 opinion and after the 8-K was belatedly released and  
17 after you did this additional work, including the  
18 review of the reasons for the restatement, did  
19 Thornburg ultimately issue its restatement?

20 A. Yes.

21 Q. Can we put up Plaintiff's Exhibit 329? And  
22 this is that document?

23 A. Yes, it is.

24 Q. And if we looked in there, we'd find that  
25 there is an audit opinion from you in there.

1 A. Yes.

2 Q. And unlike the other one, it would have  
3 that going concern paragraph that we talked about an  
4 hour or so ago?

5 A. It would. It does.

6 Q. And what role, if any, did KPMG have in the  
7 restatement?

8 A. Well, our role is, again, to serve as the  
9 independent auditors, and so our role is to once  
10 again reach an opinion on the financial statements,  
11 perform sufficient testwork to allow us to reach that  
12 opinion.

13 Q. And do you recall when the restatement was  
14 filed?

15 A. I believe it was March 11, if I'm not  
16 mistaken, 2008.

17 Q. So for the type of work you do, is from  
18 March 4 to March 11 a long time or a short time to do  
19 the work associated with a new 10-K filing?

20 A. It's a short time.

21 Q. So was there lots of work being done?

22 A. Yes, there was.

23 Q. Were you working weekends?

24 A. Yes, we were.

25 Q. Nights?

1 A. Nights, yes.

2 Q. And during that time, did you have any  
3 encounters, notable encounters, with Mr. Simmons  
4 during that period?

5 A. Yes.

6 Q. Can you tell me about that?

7 A. My recollection, it was on the weekend  
8 leading up to finalizing accounting entries  
9 associated with the impaired securities. And he was  
10 angry that we could not reach what he thought was a  
11 quick decision on the accounting entries, and so he  
12 came to the second floor and was extremely hostile to  
13 me personally as we were trying to wrap things up.

14 Q. All right. So the restatement gets filed  
15 on March 11. And then the last thing I want to cover  
16 is: Do you ultimately have a meeting on March 18  
17 with the audit committee?

18 A. Yes.

19 Q. And if we can pull up Exhibit IB, please,  
20 Mr. King. Thank you.

21 And this is the minutes of that meeting.  
22 It's the minutes of a meeting of the audit committee  
23 dated March 18, and it indicates that you and Mr.  
24 McLamb were present, Mr. McLamb by phone. Is that  
25 consistent with your recollection?

1 A. Yes.

2 Q. Okay. And I wanted to talk to you about --  
3 did you -- during that meeting, did you tell the  
4 audit committee about certain things that had  
5 happened and that you learned about during the  
6 restatement that you didn't know about during the  
7 audit that you feel like you should have known about?

8 A. Yes, we did.

9 Q. And what were those things?

10 A. The things that we told them were that,  
11 one, the company had stopped funding loans in that  
12 time period. We were not made aware of that. Two,  
13 that the company was not meeting its margin calls on  
14 a daily basis, not satisfying calls that were issued  
15 by lenders on a daily basis, not meeting those in  
16 accordance with the agreements. Three, that they had  
17 received, from January 1st up through the date of the  
18 filing, nearly a billion dollars of margin calls in  
19 that time period.

20 And the fourth thing --

21 Q. Does it relate to I/O strips?

22 A. Yes, the purpose of the I/O strip sale.

23 Q. So you communicated that to the board, that  
24 those were things not told to you during the audit  
25 but you wish they had been?

1 A. Yes, we told the audit committee.

2 Q. So let's look at the KPMG overall  
3 conclusion section of the minutes. And the first  
4 bullet there says that "Cynthia Reinhart stated that  
5 KPMG's two primary conclusions were: There are no  
6 concerns about senior management's integrity during  
7 this period, February 14 to March 11."

8 Did you give them that opinion at the  
9 meeting?

10 A. I did.

11 Q. And how did you reach that opinion in light  
12 of the additional information you learned during the  
13 restatement that you had just -- that you also told  
14 the audit committee at that meeting?

15 A. At the time, we didn't think that they  
16 weren't being purposely forthcoming, but that they  
17 for -- didn't appreciate that we needed that  
18 information in order to be able to reach our  
19 conclusions.

20 Q. You thought it was sort of an oversight on  
21 their part?

22 A. Oversight, yes.

23 Q. Now, at the time that you reached this  
24 opinion on March 18 that's memorialized in these  
25 audit commitment meetings that there were no concerns



1 about senior management's integrity, did you know at  
2 that moment that Thornburg had received a reservation  
3 of rights letter from Citi?

4 A. No.

5 Q. Did you know at that moment that  
6 Thornburg's senior management knew about the  
7 impending collapse of the Peloton hedge fund prior to  
8 filing the Form 10-K?

9 A. No.

10 Q. Did you know that Thornburg had canceled a  
11 securitization to avoid making disclosures about its  
12 margin call situation?

13 A. No.

14 Q. Did you know that Ms. Starrett had  
15 indicated in an email to Mr. Goldstone and Mr.  
16 Simmons that they had purposely not told KPMG certain  
17 things about margin calls?

18 A. No.

19 Q. And those are all things we've seen in the  
20 documents today.

21 A. That's correct.

22 Q. If you had known all that information on  
23 March 18, would you have reached the same conclusion?

24 A. I would not have.

25 Q. What is your opinion today?

1           A.    My opinion today is that we were --  
2   information was purposely withheld from us as the  
3   external auditors.

4           MR. KASPER:   That's all the questions I  
5   have, Your Honor.

6           THE COURT:   Thank you, Mr. Kasper.

7           Cross-examination, Mr. Lee?

8           MR. LEE:   Thank you, Your Honor.

9           THE COURT:   Mr. Lee.

10                           CROSS-EXAMINATION

11   BY MR. LEE:

12           Q.    Good afternoon, Ms. Reinhart.

13           A.    Good afternoon, Mr. Lee.

14           Q.    You testified a number of times this  
15   afternoon about your view or your belief that  
16   management has an affirmative obligation to bring  
17   significant information to the attention of the  
18   auditors; right?

19           A.    Yes, I did.

20           Q.    And that testimony was in reference to the  
21   management -- the engagement letter that was entered  
22   into between Thornburg and KPMG; correct?

23           A.    The engagement letter and also the  
24   representation letter that's provided from management  
25   to KPMG has those affirmations.

1 Q. Right. And you understand that the  
2 engagement letter is not at issue in this case. You  
3 understand that Mr. Goldstone and Mr. Simmons are not  
4 being charged with breaching the engagement letter;  
5 correct?

6 A. I don't know specifically what the charges  
7 are, Mr. Lee.

8 Q. Oh, you don't even know that the engagement  
9 letter is -- violating the engagement letter is not a  
10 violation of the federal securities laws? You're not  
11 aware of that?

12 A. I've not focused on the specific charges.  
13 That's all.

14 Q. And are you aware that there is actually a  
15 federal statute that governs the provision of  
16 information by management to auditors? Are you aware  
17 of that?

18 A. Yes.

19 Q. And can you tell me what statute is?

20 A. No, I cannot tell you what that statute is.

21 Q. And you don't have an opinion on that  
22 statute; correct?

23 A. No, I don't.

24 Q. And you understand that that statute is  
25 what my clients are charged with violating in this

1 case; correct?

2 A. If you say so, yes.

3 Q. And so you have no opinion on whether or  
4 not the provision of information or the lack of  
5 information alleged by my client is a violation of  
6 the statute at issue in this case, do you?

7 A. No, I don't.

8 Q. And so all of your testimony about -- your  
9 view that management has an affirmative obligation to  
10 bring information to your attention, none of that is  
11 relevant to the statute, at least insofar as you  
12 understand it; correct?

13 A. Well, I can only relate to you what I  
14 understand with respect to auditors and auditees'  
15 responsibilities among themselves.

16 Q. Right. But you don't have an understanding  
17 of the statute that actually sets forth the legal  
18 framework for the relationship between auditors and  
19 management; correct?

20 A. No, I do not.

21 Q. Now, you were asked a number of questions  
22 about emails written by other people. Do you recall  
23 that?

24 A. Yes, I do.

25 Q. And you were asked by Mr. Kasper to

1 speculate about the meaning of various emails written  
2 by other people; right?

3 A. I read those emails, yes.

4 Q. And he asked you what did you understand  
5 them to mean; right?

6 A. Yes.

7 Q. And you have not spoken to the authors of  
8 those emails; right?

9 A. I have not.

10 Q. And Mr. Kasper asked you a question about  
11 whether it would be more useful to look at the letter  
12 or the text of the email, or whether it would be  
13 better, on the other hand, to hear an explanation  
14 from two people who are on trial. Do you recall that  
15 question?

16 A. Yes, I do.

17 Q. And you testified that you would rather  
18 just look at the email; correct?

19 A. That was my testimony, yes.

20 Q. And so your testimony is, you actually  
21 aren't interested in the explanation of two people  
22 who are on trial. Is that fair to say?

23 A. No, I wish I had the opportunity to hear  
24 from those people at the time. But I was not  
25 afforded that opportunity.

1 Q. And did you ever request the SEC for that  
2 opportunity when they started showing you emails  
3 during the investigation of this case? Did you ever  
4 ask them for that opportunity?

5 A. No, I did not.

6 Q. Did you ever ask your lawyers, your team of  
7 lawyers that has been sitting here in court all day  
8 and throughout this trial -- did you ever ask them  
9 for the opportunity to hear what my clients have to  
10 say about the emails that were being shown to you by  
11 the SEC?

12 A. No.

13 Q. What about emails written by other people?  
14 Do you recall Mr. Kasper showed you an email written  
15 by Deborah Burns? Do you recall that?

16 A. Yes.

17 Q. And he asked you, what do you understand  
18 her to mean in her email; right?

19 A. Yes.

20 Q. And your response about what you understand  
21 her to mean -- that is total speculation, isn't it?

22 A. Well, I read the email and put it into the  
23 context of what I understand was happening at that  
24 time.

25 Q. But you have no idea what Ms. Burns

1 actually meant, do you?

2 A. It would be hard for us to say "No idea."  
3 That would be, I don't think, true.

4 Q. Well, you've never spoken to Ms. Burns  
5 about what she meant in those emails; right?

6 A. I have not.

7 Q. You've never asked for the opportunity to  
8 speak to Ms. Burns about what's in those emails;  
9 right?

10 A. I did not.

11 Q. You haven't asked the SEC for that  
12 opportunity?

13 A. No.

14 Q. And you haven't asked your lawyers for that  
15 opportunity?

16 A. No.

17 Q. And you haven't gone to Ms. Burns directly  
18 to ask for that opportunity, to hear what she had to  
19 say; right?

20 A. I wouldn't think that would be appropriate.

21 Q. Well, Ms. Burns is not a defendant in this  
22 case, is she?

23 A. No, she's not.

24 Q. Ms. Burns is a third-party witness, former  
25 Thornburg employee, hasn't been employed at Thornburg

1 in eight years. Why wouldn't it be appropriate for  
2 you to just ask her what she meant?

3 A. I wouldn't think it would be appropriate to  
4 discuss the matters of the trial to anybody outside  
5 of my attorneys, and having my best recollection.

6 Q. But you felt free to testify about what you  
7 think she meant, even though you had never heard from  
8 her; correct?

9 A. I did.

10 Q. And you know that she testified in this  
11 trial; right?

12 A. I don't know if she did or is going to. I  
13 don't know.

14 Q. So you haven't read the transcript of  
15 her -- I'll represent to you that she testified. You  
16 haven't read the transcript of her testimony, have  
17 you?

18 A. No.

19 Q. And do you know that Ms. Burns was actually  
20 called as a witness by the SEC?

21 A. I don't know if I'm aware of that. I don't  
22 know.

23 Q. And you're not actually -- you don't  
24 actually mean to be suggesting to the jury that  
25 Ms. Burns was somehow engaged in a cover-up along



1 with my clients, are you?

2 A. I don't know. I don't know if she was or  
3 wasn't.

4 Q. How about -- let's take a look at Exhibit  
5 69. You see this was one of the emails that Mr.  
6 Kasper showed you?

7 A. Yes.

8 Q. And you see at the bottom she references --  
9 the very last sentence says, "I am going to put  
10 something together with the help of our McKee  
11 counsel." Do you see that?

12 A. Yes.

13 Q. And do you know what the reference to McKee  
14 counsel is?

15 A. That's the company's outside third-party  
16 attorneys.

17 Q. Right. McKee Nelson is a law firm that  
18 represented Thornburg in connection with their  
19 securitizations; right?

20 A. That's correct.

21 Q. You're not actually suggesting to members  
22 of this jury that McKee Nelson, a big, reputable law  
23 firm, is also somehow involved in a cover-up with my  
24 clients, are you?

25 A. No.

1 Q. And you never reached out and talked to  
2 anybody at McKee Nelson about the circumstances  
3 surrounding the securitization, have you?

4 A. I never saw this email at the time, so I  
5 wouldn't -- I won't be able to answer that question.

6 THE COURT: Could we call it a day,  
7 Mr. Lee?

8 MR. LEE: Sure.

9 THE COURT: All right. Well, ladies and  
10 gentlemen, I appreciate your hard work today. Let's  
11 try to get another full day in tomorrow. So I'll ask  
12 you to be in the jury room about 8:30. I know I  
13 speak for everybody. We appreciate your hard work  
14 today and we appreciate all you've done for us.

15 All right. We'll be in recess until 8:30  
16 tomorrow. All rise.

17 (The jury left the courtroom.)

18 THE COURT: All right. Everyone be seated.  
19 Let me give you the totals so we see where we are at  
20 the end of the day. SEC has been on its feet since  
21 openings, 18 hours and one minute. And the  
22 defendants have been on their feet since openings, 17  
23 hours and 58 minutes. So it's about as even as you  
24 can get.

25 How do you feel, Mr. McKenna, at the end of

1 day 7? Do you feel like we're on track?

2 MR. McKENNA: I think we've fallen a little  
3 behind today, but I think we're still on track to get  
4 done. We're hoping to rest maybe even this week.

5 THE COURT: All right. Mr. Lee, what's  
6 your assessment?

7 MR. LEE: We're in agreement, Your Honor.

8 THE COURT: Okay. Somewhere today I passed  
9 out to you the beginning of the verdict form. I  
10 didn't get any further progress on it. But we'll  
11 show you how -- I'm going to probably finish that  
12 form tomorrow.

13 Is there anything we need to discuss before  
14 we leave? Mr. Kasper?

15 MR. KASPER: I had a couple of evidentiary  
16 issues I thought it might be helpful to discuss now.

17 THE COURT: All right. Go ahead.

18 MR. KASPER: One is, during Mr. Lee's  
19 examination of Ms. Hall, he asked a whole variety of  
20 questions that went strictly to KPMG's internal  
21 processes.

22 MR. LEE: Your Honor, we'd ask -- I'm not  
23 sure if it's appropriate for Ms. Reinhart --

24 THE COURT: All right, Ms. Reinhart. Why  
25 don't you go ahead and step down for the evening, and

1 we'll see you again at 8:30 in the morning.

2 THE WITNESS: Okay.

3 MR. KASPER: So Your Honor, there was a  
4 variety of questions that went to KPMG's internal  
5 processes, and we had talked, you know, at one of the  
6 pretrial conferences about the limits that were going  
7 to be imposed on KPMG, and you know, and Your Honor  
8 had said -- I wrote it down from the transcript --  
9 the issue is not whether KPMG was competent or not.  
10 And Mr. Lee said that he agreed with that, and that's  
11 hopefully not what the case is about.

12 But then Your Honor went on to explain,  
13 there is going to be the tie-out documents coming in  
14 and there's going to be evidence about that. But  
15 it's -- what's allowed is -- it shows that it goes to  
16 KPMG and that indicates that we, the defendants,  
17 didn't deceive them or they didn't have the intent to  
18 deceive.

19 So I understand that there is a lot of  
20 stuff that comes in, but lots of the questions went  
21 to, you know, once my clients gave you this little  
22 piece of information, shouldn't you have followed up  
23 and done these 11 other things, or whatever? I don't  
24 see how that possibly goes to any issue that's left  
25 in the case. It just seems like it plainly goes to

1 the thing that Mr. Lee said that he wasn't going to  
2 do, which is putting KPMG's competency on trial. So  
3 before -- I presume he's going to ask some similar  
4 questions of Ms. Reinhart. I just wanted to raise  
5 that to see if there was going to be any limits  
6 placed on that at all.

7 THE COURT: All right. Mr. Lee?

8 MR. LEE: Well, Your Honor, I guess it's a  
9 little hard to respond in a vacuum. I'm not sure  
10 exactly what Mr. Kasper is referring to. I don't  
11 think the thrust of our argument has been -- or the  
12 thrust of our questioning has been attacking KPMG's  
13 competence at all. We've taken great pains and it's  
14 been laborious, as the Court knows, to go through all  
15 the things that KPMG did do.

16 If there were questions about areas that  
17 they could have followed up on, I mean, that's a  
18 natural part of providing the overall context to the  
19 work they did do and didn't do, particularly because  
20 the entire thrust of the prosecution here is all the  
21 things that KPMG didn't know.

22 THE COURT: All right.

23 MR. KASPER: Your Honor, the issue isn't  
24 whether or not KPMG could have sussed it out, whether  
25 or not they were the world's greatest auditors, they

1 could have figured this out. It goes to whether or  
2 not the defendants were being fulsome or not, and I  
3 don't see how any of those things go to that issue.  
4 And I thought that issue had been addressed and  
5 agreed, and all the parties had sort of a boundary in  
6 mind about where those limits were. And anyway, what  
7 happened earlier today with Ms. Hall I thought was  
8 well on the other side of that line. So I just --  
9 that's what I wanted to raise, because, I mean, I'm  
10 happy to wait and make my objection when Mr. Lee goes  
11 there and asks those questions, but I thought it  
12 might make sense to do it now while we had a moment  
13 without the witness or the jury here.

14 THE COURT: Well, you know, it's been a  
15 difficult line to draw. I mean, I think it's  
16 probably just going to have to sort itself out more  
17 in closing argument than it really is on an  
18 evidentiary scale.

19 Yes, I think there might be a few questions  
20 that are more going to the negligence or the  
21 competence of KPMG rather than to the fraud, but the  
22 problem is, I think the line is so hard to draw, I  
23 haven't been willing because I don't think I've been  
24 able to confidently draw the line in the past. It  
25 may be one of those things where we have to take it a

1 question at a time. But in the end, I wonder if it's  
2 going to save us any time to try to slice the meat  
3 that thin.

4 MR. KASPER: I will at least tomorrow, to  
5 the extent I hear those questions, at least give it  
6 one or two tries and see if I get anywhere.

7 There was another evidentiary issue I  
8 wanted to raise, which was: We had talked about  
9 defendants' compensation so I had sort of two  
10 questions about that. One is: Are we going to be  
11 entitled to inquire of Ms. Starrett about what her  
12 compensation was during those years, since she's no  
13 longer a defendant? The first question.

14 THE COURT: I don't think that her -- I  
15 mean if you want to impeach her, you know, you can  
16 impeach her. It's impeachment evidence, her bias,  
17 goes to her credibility, why she had a motive to do  
18 what she did. I don't think that's changed. If, in  
19 fact, you feel that you need to get into her motive,  
20 I think that evidence is still available to you.

21 MR. KASPER: Thank you. And then the other  
22 issue was, you know, our motion ended up being about  
23 defendants' compensation for 2006, 2007, 2008,  
24 because, that's what we had written documents about,  
25 and those documents ended up on our exhibit list when

1 the defendants filed their motion. So my question  
2 was what the Court's feelings were on their  
3 compensation beyond that time. We have other  
4 evidence, testimonial evidence. I know Mr.  
5 Simmons -- I specifically asked him, and he told me.  
6 And that evidence seems plainly relevant to me under  
7 the same theory that it was before, they were making  
8 these nice salaries before and the significance is  
9 not only that they were nice salaries; in fact, I  
10 think the real significance is they were salaries  
11 that couldn't be recreated somewhere else other than  
12 Thornburg. And so the fact that they were making  
13 these high salaries while they worked at Thornburg  
14 and made significantly less money in the years since  
15 seems relevant to me.

16 So I just wanted to not wander -- and we've  
17 exchanged the letters you've instructed us to  
18 exchange. So for those years I have exactly the  
19 questions and so forth. But I didn't know if I would  
20 be running afoul of the Court's order if I sought to  
21 introduce evidence of Mr. Simmons' compensation, for  
22 example, in the years after the documents we had and  
23 that we exchanged the letter about.

24 THE COURT: Any thoughts on that, Mr. Lee?

25 MR. LEE: Well, yes. I believe we have



1 already addressed this. I mean, the motion was  
2 argued. I think any period of time after 2008 is  
3 irrelevant. It's not charged conduct. The Court  
4 heard argument on this issue. The Court has, you  
5 know, very carefully considered how to present that  
6 evidence. We've done that. We've taken the time to  
7 determine and reach agreement with the SEC on an  
8 accurate sort of calculation and an accurate  
9 presentation for 2006 through 2008. We had taken the  
10 position, as the Court may recall, that even 2006 was  
11 irrelevant, but the Court felt like it was  
12 appropriate to let in.

13 So I don't think further opening the door,  
14 particularly at this late stage, is warranted.

15 THE COURT: Well, I'm going to leave it  
16 there. I'm not sure how the evidence hurts you. I  
17 mean, in some ways, the fact that they're earning  
18 less might draw some sympathy from the jury, the fact  
19 that they suffered, just like everybody else,  
20 including the shareholders. But I do think as far as  
21 evidence of motive, I guess it proves the fact. But  
22 it doesn't really show more motive. So I'll leave my  
23 ruling where it is. I think we've carefully crafted  
24 the way we're going to get in the evidence of motive.  
25 I think the fact that they're not making what they

1       were doesn't really go to motive. It just shows  
2       that, you know, the motive was strong.

3               So I'll just leave the ruling where it was,  
4       and that will be the limited evidence that we have of  
5       salaries.

6               All right. See y'all at 8:30 in the  
7       morning.

8               MR. SCHULTZ: Your Honor, one brief thing.  
9       I have a hearing in state court in Gallup tomorrow.  
10      With the Court's permission, I'd like to be excused  
11      tomorrow.

12              THE COURT: No objection from the SEC?

13              MR. McKENNA: No.

14              THE COURT: Have fun in Gallup. Y'all have  
15      a good evening.

16              (Court stood in recess.)

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## C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
Official Court Reporter for the State of New Mexico,  
do hereby certify that the foregoing pages constitute  
a true transcript of proceedings had before the said  
Court, held in the District of New Mexico, in the  
matter therein stated.

In testimony whereof, I have hereunto set my  
hand on June 14, 2016.



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